

SUBCOMMITTEE: ELEMENTARY & SECONDARY EDUCATION

HOUSE BILL NO. 1012

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on _____)

(Patron Prior to Substitute--Delegate Bulova)

A BILL to amend and reenact §§ 2.2-1167, 2.2-3705.5, 9.1-914, 15.2-741, 15.2-914, 15.2-2292, 15.2-2824, 18.2-255.2, 18.2-370.2, 18.2-370.3, 19.2-389, as it is currently effective and as it shall become effective, 19.2-390, 19.2-392.02, 22.1-1, 22.1-19, 22.1-199.1, 22.1-296.3, 22.1-299.4, 46.2-341.9, 46.2-341.10, 46.2-341.18:3, 51.1-617, 54.1-3005, 54.1-3408, 58.1-439.4, 63.2-100, 63.2-215, 63.2-501, 63.2-601.2, 63.2-603, 63.2-1509, 63.2-1515, 63.2-1700, 63.2-1701, 63.2-1702, 63.2-1706.1, 63.2-1708, 63.2-1715, 63.2-1720, as it shall become effective, 63.2-1721, as it shall become effective, 63.2-1722, as it is currently effective and as it shall become effective, 63.2-1723, 63.2-1734, and 63.2-1911 of the Code of Virginia; to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 14.1, containing articles numbered 1 through 8, consisting of sections numbered 22.1-289.02 through 22.1-289.055; and to repeal §§ 2.2-208.1, 63.2-1701.1, 63.2-1704, 63.2-1704.1, 63.2-1716, 63.2-1717, 63.2-1720.1, 63.2-1721.1, 63.2-1724, 63.2-1725, 63.2-1727, 63.2-1738, 63.2-1809 through 63.2-1813, and 63.2-1815 of the Code of Virginia, relating to a system for early childhood care and education; establishment; licensure.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1167, 2.2-3705.5, 9.1-914, 15.2-741, 15.2-914, 15.2-2292, 15.2-2824, 18.2-255.2, 18.2-370.2, 18.2-370.3, 19.2-389, as it is currently effective and as it shall become effective, 19.2-390, 19.2-392.02, 22.1-1, 22.1-19, 22.1-199.1, 22.1-296.3, 22.1-299.4, 46.2-341.9, 46.2-341.10, 46.2-341.18:3, 51.1-617, 54.1-3005, 54.1-3408, 58.1-439.4, 63.2-100, 63.2-215, 63.2-501, 63.2-601.2, 63.2-603, 63.2-1509, 63.2-1515, 63.2-1700, 63.2-1701, 63.2-1702, 63.2-1706.1, 63.2-1708, 63.2-1715, 63.2-1720, as it shall become effective, 63.2-1721, as it shall become effective, 63.2-1722, as it is currently effective and as it shall become effective, 63.2-1723, 63.2-1734, and 63.2-1911 of the Code of Virginia are

amended and reenacted and that the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 14.1, containing articles numbered 1 through 8, consisting of sections numbered 22.1-289.02 through 22.1-289.055, as follows:

§ 2.2-1167. Commonwealth immune from civil liability.

The Commonwealth and its officers, agents and employees shall be immune from civil liability for actions (i) arising from the establishment and implementation of asbestos inspection standards developed pursuant to § 2.2-1164 and (ii) undertaken pursuant to the provisions of this article, Chapter 5 (§ 54.1-500 et seq.) of Title 54.1, and §§ 22.1-289.052 and 32.1-126.1 ~~and 63.2-1811~~.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where

the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

3. Reports, documentary evidence, and other information as specified in §§ 51.5-122 and 51.5-141 and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Education in connection with an active investigation of an applicant or licensee pursuant to Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and

information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review Team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review team to the extent that such information is made confidential by § 32.1-283.7; or (v) during a review of any death conducted by the Maternal Mortality Review Team to the extent that such information is made confidential by 32.1-283.8.

8. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

9. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by

the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

10. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

12. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical summaries, abstracts, or other information in aggregate form.

13. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

14. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.

15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

16. Records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § 32.1-372.

§ 9.1-914. Automatic notification of registration to certain entities; electronic notification to requesting persons.

Any school, or day-care service and child-minding service, ; state-regulated or state-licensed child day center, child day program, ~~children's residential facility,~~ or family day home, as those terms are

defined in § 22.1-289.02; assisted living facility, children's residential facility, or foster home as those
terms are defined in § 63.2-100; nursing home or certified nursing facility as those terms are defined in §
32.1-123; association of a common interest community as defined in § 54.1-2345; and institution of
higher education may request from the State Police and, upon compliance with the requirements therefor
established by the State Police, shall be eligible to receive from the State Police electronic notice of the
registration or reregistration of any sex offender and if such entities do not have the capability of receiving
such electronic notice, the entity may register with the State Police to receive written notification of sex
offender registration or reregistration. Within three business days of receipt by the State Police of
registration or reregistration, the State Police shall electronically or in writing notify an entity listed above
that has requested such notification, has complied with the requirements established by the State Police
and is located in the same or a contiguous zip code area as the address of the offender as shown on the
registration.

The Virginia Council for Private Education shall annually provide the State Police, in an electronic
format approved by the State Police, with the location of every private school in the Commonwealth that
is accredited through one of the approved accrediting agencies of the Council, and an electronic mail
address for each school if available, for purposes of receiving notice under this section.

Any person may request from the State Police and, upon compliance with the requirements therefor
established by the State Police, shall be eligible to receive from the State Police electronic notice of the
registration or reregistration of any sex offender. Within three business days of receipt by the State Police
of registration or reregistration, the State Police shall electronically notify a person who has requested
such notification, has complied with the requirements established by the State Police and is located in the
same or a contiguous zip code area as the address of the offender as shown on the registration.

The State Police shall establish reasonable guidelines governing the automatic dissemination of
Registry information, which may include the payment of a fee, whether a one-time fee or a regular
assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and
maintaining the electronic notification system and notice by mail.

For the purposes of this section:

"Child-minding service" means provision of temporary custodial care or supervisory services for the minor child of another;

"Day-care service" means provision of supplementary care and protection during a part of the day for the minor child of another; and

"School" means any public, religious or private educational institution, including any preschool, elementary school, secondary school, post-secondary school, trade or professional institution, or institution of higher education.

§ 15.2-741. Regulation of child-care services and facilities in certain counties.

A. The board may by ordinance provide for the regulation and licensing of (i) persons who provide child-care services for remuneration and (ii) child-care facilities. "Child-care services" includes regular care, protection, or guidance during a part of a day to one or more children, not related by blood or marriage to the provider of services, while they are not attended by their parent, guardian, or person with legal custody. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services for remuneration. However, such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by ~~§-63.2-1716~~ 22.1-289.031.

B. Such ordinance may be more restrictive or more extensive in scope than statutes or state regulations that may affect child-care services or child-care facilities, provided that such ordinance shall not impose additional requirements or restrictions on the construction or materials to be used in the erection, alteration, repair, or use of a residential dwelling.

§ 15.2-914. Regulation of child-care services and facilities in certain counties and cities.

Any (i) county that has adopted the urban county executive form of government, (ii) city adjacent to a county that has adopted the urban county executive form of government, or (iii) city which is completely surrounded by such county may by ordinance provide for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to one or more children not related by blood or marriage while such children are separated from their parent,

guardian or legal custodian in a dwelling not the residence of the child during a part of the day for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services.

Such local ordinance shall not require the regulation or licensing of any child-care facility that is licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by § ~~63.2-1716~~ 22.1-289.031.

Such local ordinances shall not be more extensive in scope than comparable state regulations applicable to family day homes. Such local ordinances may regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities so long as such regulation remains no more extensive in scope than comparable state regulations applicable to family day homes. Local regulations shall not affect the manner of construction or materials to be used in the erection, alteration, repair or use of a residential dwelling.

Such local ordinances may require that persons who provide child-care services shall provide certification from the Central Criminal Records Exchange and a national criminal background check, in accordance with §§ 19.2-389 and 19.2-392.02, that such persons have not been convicted of any offense involving the sexual molestation of children or the physical or sexual abuse or rape of a child or any barrier crime defined in § 19.2-392.02, and such ordinances may require that persons who provide child-care services shall provide certification from the central registry of the Department of Social Services that such persons have not been the subject of a founded complaint of abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based.

§ 15.2-2292. Zoning provisions for family day homes.

A. Zoning ordinances for all purposes shall consider a family day home as defined in § ~~63.2-100~~ 22.1-289.02, serving one through four children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed

upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or 15.2-914.

B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home, as defined in ~~§ 63.2-100~~ 22.1-289.02, serving five through 12 children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance and all other applicable local ordinances, the zoning administrator shall issue the permit sought. If the zoning administrator receives a written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall consider such objection and may (i) issue or deny the permit sought or (ii) if required by the ordinance, refer the permit to the local governing body for consideration. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. Upon such hearing, the local governing body may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under subdivision A 3 of § 15.2-2286.

§ 15.2-2824. Prohibitions on smoking generally; penalty for violation.

A. Smoking shall be prohibited in (i) elevators, regardless of capacity, except in any open material hoist elevator not intended for use by the general public; (ii) public school buses; (iii) the interior of any public elementary, intermediate, and secondary school; (iv) hospital emergency rooms; (v) local or district health departments; (vi) polling rooms; (vii) indoor service lines and cashier lines; (viii) public restrooms in any building owned or leased by the Commonwealth or any agency thereof; (ix) the interior of a child

day center licensed pursuant to ~~§ 63.2-1701~~ 22.1-289.011 that is not also used for residential purposes; however, this prohibition shall not apply to any area of a building not utilized by a child day center, unless otherwise prohibited by this chapter; and (x) public restrooms of health care facilities.

B. No person shall smoke in any area or place specified in subsection A and any person who continues to smoke in such area or place after having been asked to refrain from smoking shall be subject to a civil penalty of not more than \$25.

C. Civil penalties assessed under this section shall be paid into the Virginia Health Care Fund established under § 32.1-366.

§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance, or marijuana while:

1. Upon the property, including buildings and grounds, of any public or private elementary or secondary school, any institution of higher education, or any clearly marked licensed child day center as defined in ~~§ 63.2-100~~ 22.1-289.02;

2. Upon public property or any property open to public use within 1,000 feet of the property described in subdivision 1;

3. On any school bus as defined in § 46.2-100;

4. Upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity;

5. Upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or

6. Upon the property of any state facility as defined in § 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions of this section if the person possessed the controlled substance, imitation controlled substance, or marijuana on the property described in subdivisions 1 through 6, regardless of where the person intended to sell, give

or distribute the controlled substance, imitation controlled substance, or marijuana. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he is guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

§ 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) clause (iii) of subsection A ~~(iii) of subsection A~~ of § 18.2-61, ~~§§ § 18.2-63, or~~ § 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, ~~or~~ subdivision A 1 or A 4 (a) of § 18.2-67.3, ~~or §§ § 18.2-370, or~~ § 18.2-370.1, clause (ii) of § 18.2-371, ~~§§ or § 18.2-374.1, 18.2-374.1:1 or~~ § 18.2-379. As of July 1, 2006, "offense prohibiting proximity to children" includes a violation of § 18.2-472.1; when the offense requiring registration was one of the foregoing offenses.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within

100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. In addition, every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a child day program as defined in § ~~63.2-100~~ 22.1-289.02.

C. Every adult who is convicted of an offense prohibiting proximity to children, when the offense occurred on or after July 1, 2008, shall as part of his sentence be forever prohibited from going, for the purpose of having any contact whatsoever with children who are not in his custody, within 100 feet of the premises of any place owned or operated by a locality that he knows or should know is a playground, athletic field or facility, or gymnasium.

D. Any person convicted of an offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof, similar to any offense set forth in subsection A shall be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary, or high school or any place he knows or has reason to know is a child day program as defined in § ~~63.2-100~~ 22.1-289.02. In addition, he shall be forever prohibited from going, for the purpose of having any contact whatsoever with children who are not in his custody, within 100 feet of the premises of any place owned or operated by a locality that he knows or has reason to know is a playground, athletic field or facility, or gymnasium.

E. A violation of this section is punishable as a Class 6 felony.

§ 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty.

A. Every adult who is convicted of an offense occurring on or after July 1, 2006, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, (iii) subdivision A 1 of § 18.2-67.2, or (iv) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof, shall be forever prohibited from residing within 500 feet of the premises of any place he knows or has reason to know is a child day center as defined in § ~~63.2-100~~ 22.1-289.02, or a primary, secondary, or high school. A violation of this section is a Class 6 felony.

The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct as, or as part of a common scheme or plan as a violation of (a) subsection A of § 18.2-47 or § 18.2-48; (b) § 18.2-89, 18.2-90, or 18.2-91; (c) § 18.2-51.2; or (d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

B. An adult who is convicted of an offense as specified in subsection A and has established a lawful residence shall not be in violation of this section if a child day center or a primary, secondary, or high school is established within 500 feet of his residence subsequent to his conviction.

C. Every adult who is convicted of an offense occurring on or after July 1, 2008, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, (iii) subdivision A 1 of § 18.2-67.2, or (iv) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof, shall be forever prohibited from residing within 500 feet of the boundary line of any place he knows is a public park when such park (a) is owned and operated by a county, city, or town, (b) shares a boundary line with a primary, secondary, or high school, and (c) is regularly used for school activities. A violation of this section is a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct as, or as part of a common scheme or plan as a violation of (1) subsection A of § 18.2-47 or § 18.2-48; (2) § 18.2-89, 18.2-90, or 18.2-91; (3) § 18.2-51.2; or (4) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

D. An adult who is convicted of an offense as specified in subsection C and has established a lawful residence shall not be in violation of this section if a public park that (i) is owned and operated by a county, city, or town, (ii) shares a boundary line with a primary, secondary, or high school, and (iii) is regularly used for school activities, is established within 500 feet of his residence subsequent to his conviction.

E. The prohibitions in this section predicated upon an offense similar to any offense set forth in this section under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof, shall apply only to residences established on and after July 1, 2017.

§ 19.2-389. (Effective until January 1, 2021) Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall

377 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
378 security and confidentiality of the data;

379 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
380 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
381 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
382 security of the data;

383 5. Agencies of state or federal government that are authorized by state or federal statute or
384 executive order of the President of the United States or Governor to conduct investigations determining
385 employment suitability or eligibility for security clearances allowing access to classified information;

386 6. Individuals and agencies where authorized by court order or court rule;

387 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
388 owned, operated or controlled by any political subdivision, and any public service corporation that
389 operates a public transit system owned by a local government for the conduct of investigations of
390 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
391 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
392 conviction record would be compatible with the nature of the employment, permit, or license under
393 consideration;

394 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.)
395 of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered
396 a position of employment whenever, in the interest of public welfare or safety and as authorized in the
397 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
398 with a conviction record would be compatible with the nature of the employment under consideration;

399 8. Public or private agencies when authorized or required by federal or state law or interstate
400 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult
401 members of that individual's household, with whom the agency is considering placing a child or from
402 whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary,
403 or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall

not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, ~~and other adults living in family day homes or homes approved by family day systems,~~ and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, ~~63.2-1720.1, and~~ 63.2-1721, ~~and 63.2-1721.1,~~ subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

431 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
432 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
433 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

434 15. Licensed nursing homes, hospitals and home care organizations for the conduct of
435 investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-
436 126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-
437 162.9:1, subject to the limitations set out in subsection E;

438 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
439 investigations of applicants for compensated employment in licensed assisted living facilities and licensed
440 adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

441 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set
442 forth in § 4.1-103.1;

443 18. The State Board of Elections and authorized officers and employees thereof and general
444 registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with
445 respect to voter registration, limited to any record of felony convictions;

446 19. The Commissioner of Behavioral Health and Developmental Services for those individuals
447 who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
448 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

449 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
450 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
451 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

452 21. Residential facilities for juveniles regulated or operated by the Department of Social Services,
453 the Department of Education, or the Department of Behavioral Health and Developmental Services for
454 the purpose of determining applicants' fitness for employment or for providing volunteer or contractual
455 services;

456 22. The Department of Behavioral Health and Developmental Services and facilities operated by
457 the Department for the purpose of determining an individual's fitness for employment pursuant to
458 departmental instructions;

459 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
460 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
461 records information on behalf of such governing boards or administrators pursuant to a written agreement
462 with the Department of State Police;

463 24. Public institutions of higher education and nonprofit private institutions of higher education
464 for the purpose of screening individuals who are offered or accept employment;

465 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-
466 79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution
467 of higher education, for the purpose of assessing or intervening with an individual whose behavior may
468 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
469 history record information obtained pursuant to this section or otherwise use any record of an individual
470 beyond the purpose that such disclosure was made to the threat assessment team;

471 26. Executive directors of community services boards or the personnel director serving the
472 community services board for the purpose of determining an individual's fitness for employment, approval
473 as a sponsored residential service provider, or permission to enter into a shared living arrangement with a
474 person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

475 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
476 determining an individual's fitness for employment, approval as a sponsored residential service provider,
477 or permission to enter into a shared living arrangement with a person receiving medical assistance services
478 pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

479 28. The Commissioner of Social Services for the purpose of locating persons who owe child
480 support or who are alleged in a pending paternity proceeding to be a putative father, provided that only
481 the name, address, demographics and social security number of the data subject shall be released;

482 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.)
483 of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
484 purpose of determining if any applicant who accepts employment in any direct care position or requests
485 approval as a sponsored residential service provider or permission to enter into a shared living arrangement
486 with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime
487 that affects his fitness to have responsibility for the safety and well-being of individuals with mental
488 illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

489 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating
490 applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
491 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

492 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
493 for the purpose of determining if any person being considered for election to any judgeship has been
494 convicted of a crime;

495 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
496 determining an individual's fitness for employment in positions designated as sensitive under Department
497 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

498 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
499 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
500 Violent Predators Act (§ 37.2-900 et seq.);

501 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
502 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
503 companies, for the conduct of investigations of applications for employment or for access to facilities, by
504 contractors, leased laborers, and other visitors;

505 35. Any employer of individuals whose employment requires that they enter the homes of others,
506 for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

507 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
508 providers of adult foster care and home-based services or (ii) any individual with whom the agency is

considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of ~~Social Services and directors of local departments of social services~~ Education or its agents or designees for the purpose of screening individuals seeking to enter into a contract with the Department of ~~Social Services or a local department of social services~~ Education or its

agents or designees for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; ~~and~~

45. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Superintendent of Public Instruction's representative, or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination; and

46. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on

whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

§ 19.2-389. (Effective January 1, 2021) Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a

615 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest
616 and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

617 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to
618 provide services required for the administration of criminal justice pursuant to that agreement which shall
619 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
620 security and confidentiality of the data;

621 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
622 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
623 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
624 security of the data;

625 5. Agencies of state or federal government that are authorized by state or federal statute or
626 executive order of the President of the United States or Governor to conduct investigations determining
627 employment suitability or eligibility for security clearances allowing access to classified information;

628 6. Individuals and agencies where authorized by court order or court rule;

629 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
630 owned, operated or controlled by any political subdivision, and any public service corporation that
631 operates a public transit system owned by a local government for the conduct of investigations of
632 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
633 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
634 conviction record would be compatible with the nature of the employment, permit, or license under
635 consideration;

636 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.)
637 of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered
638 a position of employment whenever, in the interest of public welfare or safety and as authorized in the
639 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
640 with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, ~~and other adults living in family day homes or homes approved by family day systems,~~ and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, ~~63.2-1720.1, and~~ 63.2-1721, ~~and 63.2-1721.1,~~ subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than

the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

694 21. Residential facilities for juveniles regulated or operated by the Department of Social Services,
695 the Department of Education, or the Department of Behavioral Health and Developmental Services for
696 the purpose of determining applicants' fitness for employment or for providing volunteer or contractual
697 services;

698 22. The Department of Behavioral Health and Developmental Services and facilities operated by
699 the Department for the purpose of determining an individual's fitness for employment pursuant to
700 departmental instructions;

701 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
702 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
703 records information on behalf of such governing boards or administrators pursuant to a written agreement
704 with the Department of State Police;

705 24. Public institutions of higher education and nonprofit private institutions of higher education
706 for the purpose of screening individuals who are offered or accept employment;

707 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-
708 79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution
709 of higher education, for the purpose of assessing or intervening with an individual whose behavior may
710 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
711 history record information obtained pursuant to this section or otherwise use any record of an individual
712 beyond the purpose that such disclosure was made to the threat assessment team;

713 26. Executive directors of community services boards or the personnel director serving the
714 community services board for the purpose of determining an individual's fitness for employment, approval
715 as a sponsored residential service provider, or permission to enter into a shared living arrangement with a
716 person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

717 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
718 determining an individual's fitness for employment, approval as a sponsored residential service provider,
719 or permission to enter into a shared living arrangement with a person receiving medical assistance services
720 pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

721 28. The Commissioner of Social Services for the purpose of locating persons who owe child
722 support or who are alleged in a pending paternity proceeding to be a putative father, provided that only
723 the name, address, demographics and social security number of the data subject shall be released;

724 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.)
725 of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
726 purpose of determining if any applicant who accepts employment in any direct care position or requests
727 approval as a sponsored residential service provider or permission to enter into a shared living arrangement
728 with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime
729 that affects his fitness to have responsibility for the safety and well-being of individuals with mental
730 illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

731 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating
732 applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
733 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

734 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
735 for the purpose of determining if any person being considered for election to any judgeship has been
736 convicted of a crime;

737 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
738 determining an individual's fitness for employment in positions designated as sensitive under Department
739 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

740 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
741 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
742 Violent Predators Act (§ 37.2-900 et seq.);

743 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
744 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
745 companies, for the conduct of investigations of applications for employment or for access to facilities, by
746 contractors, leased laborers, and other visitors;

747 35. Any employer of individuals whose employment requires that they enter the homes of others,
748 for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

749 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
750 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
751 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
752 subject to the restriction that the data shall not be further disseminated by the agency to any party other
753 than a federal or state authority or court as may be required to comply with an express requirement of law
754 for such further dissemination, subject to limitations set out in subsection G;

755 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
756 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
757 or have accepted a position related to the provision of transportation services to enrollees in the Medicaid
758 Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program
759 administered by the Department of Medical Assistance Services;

760 38. The State Corporation Commission for the purpose of investigating individuals who are current
761 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
762 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other
763 provision of law, if an application is denied based in whole or in part on information obtained from the
764 Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of
765 Financial Institutions or his designee may disclose such information to the applicant or its designee;

766 39. The Department of Professional and Occupational Regulation for the purpose of investigating
767 individuals for initial licensure pursuant to § 54.1-2106.1;

768 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
769 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and
770 for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§
771 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

772 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

773 42. The State Treasurer for the purpose of determining whether a person receiving compensation
774 for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

775 43. The Department of ~~Social Services and directors of local departments of social services~~
776 Education or its agents or designees for the purpose of screening individuals seeking to enter into a
777 contract with the Department of ~~Social Services or a local department of social services~~ Education or its
778 agents or designees for the provision of child care services for which child care subsidy payments may be
779 provided;

780 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members
781 of a juvenile's household when completing a predispositional or postdispositional report required by §
782 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

783 45. The State Corporation Commission, for the purpose of screening applicants for insurance
784 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; ~~and~~

785 46. Administrators and board presidents of and applicants for licensure or registration as a child
786 day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the
787 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
788 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
789 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the
790 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's
791 representative, or a federal or state authority or court as may be required to comply with an express
792 requirement of law for such further dissemination; and

793 47. Other entities as otherwise provided by law.

794 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
795 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
796 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
797 designated in the order on whom a report has been made under the provisions of this chapter.

798 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn
799 to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the

criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

826 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
827 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition
828 of barrier crime in § 19.2-392.02.

829 H. Upon receipt of a written request from an employer or prospective employer, the Central
830 Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported
831 to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named
832 in the request to the employer or prospective employer making the request, provided that the person on
833 whom the data is being obtained has consented in writing to the making of such request and has presented
834 a photo-identification to the employer or prospective employer. In the event no conviction data is
835 maintained on the person named in the request, the requesting employer or prospective employer shall be
836 furnished at his cost a certification to that effect. The criminal history record search shall be conducted on
837 forms provided by the Exchange.

838 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
839 information pursuant to the rules of court for obtaining discovery or for review by the court.

840 **§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace,**
841 **clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material**
842 **submitted by other agencies.**

843 A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police
844 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
845 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on
846 forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service
847 of process upon, any person on charges resulting from an indictment, presentment or information, the
848 arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, for
849 each charge when any person is arrested on any of the following charges:

- 850 a. Treason;
- 851 b. Any felony;
- 852 c. Any offense punishable as a misdemeanor under Title 54.1;

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 22.1-289.041, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, or ~~63.2-1509, or 63.2-1727.~~

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed for each charge after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

879 3. For persons arrested on a capias for any allegation of a violation of the terms or conditions of a
880 suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a
881 report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding
882 such person in violation of the terms or conditions of a suspended sentence or probation for such felony
883 offense, the court shall order that the fingerprints and photograph of such person be taken by a law-
884 enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

885 4. For any person served with a show cause for any allegation of a violation of the terms or
886 conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or
887 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is
888 found to be in violation of the terms or conditions of a suspended sentence or probation for such felony
889 offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or
890 probation for such felony offense, the court shall order that the fingerprints and photograph of such person
891 be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records
892 Exchange.

893 5. If the accused is in custody when an indictment or presentment is found or made, or information
894 is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such
895 at the time of first appearance for each indictment, presentment, or information for which a report is
896 required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and
897 photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that
898 has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking
899 the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each
900 offense.

901 B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on
902 a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-
903 enforcement agency which received the warrant shall enter the person's name and other appropriate
904 information required by the Department of State Police into the "information systems" known as the
905 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant

906 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained
907 by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social
908 security number and such other known information which the State Police or Federal Bureau of
909 Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or
910 capias may transfer information electronically into VCIN. When the information is electronically
911 transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local
912 police department or sheriff's office. When criminal process has been ordered destroyed pursuant to §
913 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any
914 information relating to the destroyed criminal process from the VCIN and NCIC.

915 B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant
916 to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-
917 release supervision or probation, the law-enforcement agency that received the written statement shall
918 enter, or cause to be entered, the person's name and other appropriate information required by the
919 Department of State Police into the "information systems" known as the Virginia Criminal Information
920 Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.)
921 of Title 52.

922 C. For offenses not charged on a summons in accordance with § 19.2-74, the clerk of each circuit
923 court and district court shall make an electronic report to the Central Criminal Records Exchange of (i)
924 any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite
925 postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral,
926 nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to
927 return a true bill as to, any person charged with an offense listed in subsection A, including any action that
928 may have resulted from an indictment, presentment or information, or any finding that the person is in
929 violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any
930 adjudication of delinquency based upon an act that, if committed by an adult, would require fingerprints
931 to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in
932 accordance with § 19.2-74, such electronic report by the clerk of each circuit court and district court to

933 the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction
934 is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the
935 person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-
936 57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered.
937 The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange
938 of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended
939 sentence or probation for a felony offense. In the case of offenses not required to be reported to the
940 Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-
941 enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722.
942 Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to §
943 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as
944 defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender
945 and Crimes Against Minors Registry. The report to the Registry shall include the name of the person
946 convicted and all aliases that he is known to have used, the date and locality of the conviction for which
947 registration is required, his date of birth, social security number, and last known address, and specific
948 reference to the offense for which he was convicted. No report of conviction or adjudication in a district
949 court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected.
950 In the event that the records in the office of any clerk show that any conviction or adjudication has been
951 nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the
952 Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme
953 Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in
954 the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or
955 Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously
956 reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such
957 action to the law-enforcement agency that entered the warrant or capias into the VCIN.

958 D. In addition to those offenses enumerated in subsection A, the Central Criminal Records
959 Exchange may receive, classify, and file any other fingerprints, photographs, and records of arrest or

960 confinement submitted to it by any law-enforcement agency or any correctional institution or the
961 Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and
962 records received by the Central Criminal Records Exchange from any correctional institution or the
963 Department of Corrections may be classified and filed as criminal history record information.

964 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for
965 maintaining correctional status information, as required by the regulations of the Department of Criminal
966 Justice Services, with respect to individuals about whom reports have been made under the provisions of
967 this chapter shall make reports of changes in correctional status information to the Central Criminal
968 Records Exchange. The reports to the Exchange shall include any commitment to or release or escape
969 from a state or local correctional facility, including commitment to or release from a parole or probation
970 agency.

971 F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported
972 to the Exchange by the office of the Secretary of the Commonwealth.

973 G. Officials responsible for reporting disposition of charges, and correctional changes of status of
974 individuals under this section, including those reports made to the Registry, shall adopt procedures
975 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible
976 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or
977 correctional change of status and (ii) to report promptly any correction, deletion, or revision of the
978 information.

979 H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
980 Exchange shall notify all criminal justice agencies known to have previously received the information.

981 I. As used in this section:

982 "Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of
983 counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by
984 appropriate resolution or ordinance, in which case the local designation shall be controlling.

985 "Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal
986 Records Exchange in an electronic format approved by the Exchange. The report shall contain the name

of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or

1014 any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 18.2-
1015 248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255,
1016 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under
1017 the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense
1018 under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's
1019 requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901,
1020 including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§
1021 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement
1022 to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any
1023 substantially similar offense under the laws of another jurisdiction; or any offense for which registration
1024 in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where
1025 the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless
1026 five years have elapsed from the date of the conviction.

1027 "Barrier crime information" means the following facts concerning a person who has been arrested
1028 for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at
1029 the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief
1030 description of the barrier crime or offenses for which the person has been arrested or has been convicted,
1031 the disposition of the charge, and any other information that may be useful in identifying persons arrested
1032 for or convicted of a barrier crime.

1033 "Care" means the provision of care, treatment, education, training, instruction, supervision, or
1034 recreation to children or the elderly or disabled.

1035 "Department" means the Department of State Police.

1036 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by,
1037 or seeks to volunteer for a qualified entity.

1038 "Identification document" means a document made or issued by or under the authority of the
1039 United States government, a state, a political subdivision of a state, a foreign government, political
1040 subdivision of a foreign government, an international governmental or an international quasi-

1041 governmental organization that, when completed with information concerning a particular individual, is
1042 of a type intended or commonly accepted for the purpose of identification of individuals.

1043 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may
1044 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity
1045 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised
1046 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or
1047 operate a qualified entity.

1048 "Qualified entity" means a business or organization that provides care to children or the elderly or
1049 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt
1050 pursuant to subdivision A 7 of ~~§ 63.2-1715~~ 22.1-289.030.

1051 B. A qualified entity may request the Department of State Police to conduct a national criminal
1052 background check on any provider who is employed by such entity. No qualified entity may request a
1053 national criminal background check on a provider until such provider has:

1054 1. Been fingerprinted; and

1055 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address,
1056 and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
1057 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
1058 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
1059 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background
1060 check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to
1061 challenge the accuracy and completeness of any information contained in any such report, and to obtain a
1062 prompt determination as to the validity of such challenge before a final determination is made by the
1063 Department; and (v) a notice to the provider that prior to the completion of the background check the
1064 qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled
1065 for whom the qualified entity provides care.

1066 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
1067 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection

1068 B, the Department shall make a determination whether the provider has been convicted of or is the subject
1069 of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime
1070 information, the Department shall access the national criminal history background check system, which
1071 is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of
1072 identification, and shall access the Central Criminal Records Exchange maintained by the Department. If
1073 the Department receives a background report lacking disposition data, the Department shall conduct
1074 research in whatever state and local recordkeeping systems are available in order to obtain complete data.
1075 The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business
1076 days.

1077 D. Any background check conducted pursuant to this section for a provider employed by a private
1078 entity shall be screened by the Department of State Police. If the provider has been convicted of or is
1079 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified
1080 to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

1081 E. Any background check conducted pursuant to this section for a provider employed by a
1082 governmental entity shall be provided to that entity.

1083 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
1084 national criminal background check, the Department and the Federal Bureau of Investigation may each
1085 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
1086 with the fingerprints.

1087 G. The failure to request a criminal background check pursuant to subsection B shall not be
1088 considered negligence per se in any civil action.

1089 H. (Expires July 1, 2020) Notwithstanding any provisions in this section to the contrary, a spouse
1090 of a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for
1091 adoption of such child in circuit court may request the Department of State Police to conduct a national
1092 criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242.
1093 Such background checks shall otherwise be conducted in accordance with the provisions of this section.

1094 **§ 22.1-1. Definitions.**

1095 As used in this title, unless the context requires otherwise or it is otherwise specifically provided
1096 a different meaning:

1097 "Board" or "State Board" means the Board of Education.

1098 "Department" means the Department of Education.

1099 "Division superintendent" means the division superintendent of schools of a school division.

1100 "Elementary" includes kindergarten.

1101 "Elementary and secondary" and "elementary or secondary" include elementary, middle, and high
1102 school grades.

1103 "Governing body" or "local governing body" means the board of supervisors of a county, council
1104 of a city, or council of a town, responsible for appropriating funds for such locality, as the context may
1105 require.

1106 "Middle school" means separate schools for early adolescents and the middle school grades that
1107 might be housed at elementary or high schools.

1108 "Parent" or "parents" means any parent, guardian, legal custodian, or other person having control
1109 or charge of a child.

1110 "Person of school age" means a person who will have reached his fifth birthday on or before
1111 September 30 of the school year and who has not reached twenty years of age on or before August 1 of
1112 the school year.

1113 "School board" means the school board that governs a school division.

1114 "Superintendent" means the Superintendent of Public Instruction.

1115 **§ 22.1-19. Accreditation of elementary, middle, and high schools; nursery schools;**
1116 **recognition of certain organizations; child day center regulation.**

1117 The Board shall provide for the accreditation of public elementary, middle, and high schools in
1118 accordance with standards prescribed by it. The Board may provide for the accreditation of private
1119 elementary, middle, and high schools in accordance with standards prescribed by it, taking reasonably into
1120 account the special circumstances and factors affecting such private schools. The Board in its discretion

1121 may recommend provisions for accreditation standards for private nursery schools. Any such accreditation
1122 shall be at the request of the private school only.

1123 For the purposes of facilitating the transfer of academic credits for students who have attended
1124 private schools and are enrolling in public schools, and to meet the requirements of § ~~63.2-1717~~ 22.1-
1125 289.032, the Board of Education shall authorize, in a manner it deems appropriate, the Virginia Council
1126 for Private Education to accredit private nursery, preschool, elementary, and secondary schools.

1127 **§ 22.1-199.1. Programs designed to promote educational opportunities.**

1128 A. The General Assembly finds that Virginia educational research supports the conclusion that
1129 poor children are more at risk of educational failure than children from more affluent homes and that
1130 reduced pupil/teacher ratios and class sizes result in improved academic performance among young
1131 children; to this end, the General Assembly establishes a long-term goal of reducing pupil/teacher ratios
1132 and class sizes for grades K through three in those schools in the Commonwealth with high or moderate
1133 concentrations of at-risk students.

1134 With such funds as are provided in the appropriation act for this purpose, there is hereby
1135 established the statewide voluntary pupil/teacher ratio and class size reduction program for the purpose of
1136 reaching the long-term goal of statewide voluntary pupil/teacher ratio and class size reductions for grades
1137 K through three in schools with high or moderate concentrations of at-risk students, consistent with the
1138 provisions provided in the appropriation act.

1139 In order to facilitate these primary grade ratio and class size reductions, the Department of
1140 Education shall calculate the state funding of these voluntary ratio and class size reductions based on the
1141 incremental cost of providing the lower class sizes according to the greater of the division average per-
1142 pupil cost of all divisions or the actual division per-pupil cost. Localities shall provide matching funds for
1143 these voluntary ratio and class size reductions based on the composite index of local ability to pay. School
1144 divisions shall notify the Department of Education of their intention to implement the reduced ratios and
1145 class sizes in one or more of their qualifying schools by August 1 of each year. By March 31 of each year,
1146 school divisions shall forward data substantiating that each participating school has a complying
1147 pupil/teacher ratio.

1148 In developing each proposed biennium budget for public education, the Board of Education shall
1149 include funding for these ratios and class sizes. These ratios and class sizes shall be included in the annual
1150 budget for public education.

1151 B. The General Assembly finds that educational technology is one of the most important
1152 components, along with highly skilled teachers, in ensuring the delivery of quality public school education
1153 throughout the Commonwealth. Therefore, the Board of Education shall strive to incorporate
1154 technological studies within the teaching of all disciplines. Further, the General Assembly notes that
1155 educational technology can only be successful if teachers and administrators are provided adequate
1156 training and assistance. To this end, the following program is established.

1157 With such funds as are appropriated for this purpose, the Board of Education shall award to the
1158 several school divisions grants for expanded access to educational technology. Funding for educational
1159 technology training for instructional personnel shall be provided as set forth in the appropriation act.

1160 Funds for improving the quality and capacity of educational technology shall also be provided as
1161 set forth in the appropriation act, including, but not limited to, (i) funds for providing a technology resource
1162 assistant to serve every elementary school in this Commonwealth beginning on July 1, 1998, and (ii) funds
1163 to maintain the currency of career and technical education programs. Any local school board accepting
1164 funds to hire technology resource assistants or maintain currency of career and technical education
1165 programs shall commit to providing the required matching funds, based on the composite index of local
1166 ability to pay.

1167 Each qualifying school board shall establish an individualized technology plan, which shall be
1168 approved by the Superintendent of Public Instruction, for integrating technology into the classroom and
1169 into schoolwide instructional programs, including career and technical education programs. The grants
1170 shall be prioritized as follows:

1171 1. In the 1994 biennium, the first priority for these funds shall be to automate the library media
1172 centers and provide network capabilities in Virginia's elementary, middle and high schools, or
1173 combination thereof, in order to ensure access to the statewide library and other information networks. If
1174 any elementary, middle or high school has already met this priority, the 1994 biennium grant shall be used

1175 to provide other educational technologies identified in the relevant division's approved technology plan,
1176 such as multimedia and telecomputing packages, integrated learning systems, laptop computer loan
1177 programs, career and technical education laboratories or other electronic techniques designed to enhance
1178 public education and to facilitate teacher training in and implementation of effective instructional
1179 technology. The Board shall also distribute, as provided in the appropriation act, funds to support the
1180 purchase of electronic reference materials for use in the statewide automated reference system.

1181 2. In the 1996 biennium and thereafter, the first priority for funding shall be consistent with those
1182 components of the Board of Education's revised six-year technology plan which focus on (i) retrofitting
1183 and upgrading existing school buildings to efficiently use educational technology; (ii) providing (a) one
1184 network-ready multimedia microcomputer for each classroom, (b) a five-to-one ratio of pupils to network-
1185 ready microcomputers, (c) graphing calculators and relevant scientific probes/sensors as required by the
1186 Standards of Learning, and (d) training and professional development on available technologies and
1187 software to all levels and positions, including professional development for personnel delivering career
1188 and technical education at all levels and positions; and (iii) assisting school divisions in developing
1189 integrated voice-, video-, and data-connectivity to local, national and international resources.

1190 This funding may be used to implement a local school division's long-range technology plan, at
1191 the discretion of the relevant school board, if the local plan meets or exceeds the goals and standards of
1192 the Board's revised six-year technology plan and has been approved by the Superintendent of Public
1193 Instruction.

1194 3. The Departments of Education, Information Technology, and General Services shall coordinate
1195 master contracts for the purchase by local school boards of the aforementioned educational technologies
1196 and reference materials.

1197 4. Beginning on July 1, 1998, a technology replacement program shall be, with such funds as may
1198 be appropriated for this purpose, implemented to replace obsolete educational hardware and software. As
1199 provided in subsection D of § 22.1-129, school boards may donate obsolete educational technology
1200 hardware and software which are being replaced. Any such donations shall be offered to other school
1201 divisions and to preschool programs in the Commonwealth, or to public school students as provided in

guidelines to be promulgated by the Board of Education. Such guidelines shall include criteria for determining student eligibility and need; a reporting system for the compilation of information concerning the number and socioeconomic characteristics of recipient students; and notification of parents of the availability of such donations of obsolete educational hardware and software.

5. In fiscal year 2000, the Board of Education shall, with such funds as are appropriated for this purpose, contract for the development or purchase of interactive educational software and other instructional materials designed as tutorials to improve achievement on the Standards of Learning assessments. Such interactive educational software and other instructional materials may be used in media centers, computer laboratories, libraries, after-school or before-school programs or remedial programs by teachers and other instructional personnel or provided to parents and students to be used in the home. This interactive educational software and other instructional materials shall only be used as supplemental tools for instruction, remediation, and acceleration of the learning required by the K through 12 Standards of Learning objectives.

Consistent with school board policies designed to improve school-community communications and guidelines for providing instructional assistance in the home, each school division shall strive to establish a voice mail communication system after regular school hours for parents, families, and teachers by the year 2000.

~~C. The General Assembly finds that effective prevention programs designed to assist children at risk of school failure and dropout are practical mechanisms for reducing violent and criminal activity and for ensuring that Virginia's children will reach adulthood with the skills necessary to succeed in the twenty-first century; to this end, the following program is hereby established. With such funds as are appropriated for this purpose, the General Assembly hereby establishes a grant program to be disbursed by the Department of Education to schools and community-based organizations to provide quality preschool programs for at-risk four-year-olds who are unserved by Head Start programs and for at-risk five-year-olds who are not eligible to attend kindergarten.~~

~~The grants shall be used to provide at least half-day services for the length of the school year for at-risk four-year-old children who are unserved by Head Start programs and for at-risk five-year-olds who~~

1229 are not eligible to attend kindergarten. The services shall include quality preschool education, health
1230 services, social services, parental involvement including activities to promote family literacy, and
1231 transportation.

1232 The Department of Education, in cooperation with such other state agencies that may coordinate
1233 child day care and early childhood programs, shall establish guidelines for quality preschool education
1234 and criteria for the service components, consistent with the findings of the November 1993 study by the
1235 Board of Education, the Department of Education, and the Council on Child Day Care and Early
1236 Childhood Programs.

1237 The guidelines for quality preschool education and criteria for preschool education services may
1238 be differentiated according to the agency providing the services in order to comply with various relevant
1239 federal or state requirements. However, the guidelines for quality preschool education and the criteria for
1240 preschool education services shall require when such services are being provided by the public schools of
1241 the Commonwealth, and may require for other service providers, that (i) one teacher shall be employed
1242 for any class of nine students or less, (ii) if the average daily membership in any class exceeds nine students
1243 but does not exceed 18, a full time teacher's aide shall be assigned to the class, and (iii) the maximum
1244 class size shall be 18 students.

1245 School divisions may apply for and be granted waivers from these guidelines by the Department
1246 of Education.

1247 During the 1995-1996 fiscal year, the Board of Education shall, with such funds as are appropriated
1248 for this purpose, distribute grants, based on an allocation formula providing the state share of the grant per
1249 child, as specified in the appropriation act, for 30 percent of the unserved at-risk four-year-olds in the
1250 Commonwealth pursuant to the funding provided in the appropriation act.

1251 During the 1996-1997 fiscal year and thereafter, grants shall be distributed, with such funds as are
1252 appropriated for this purpose, based on an allocation formula providing the state share of the grant per
1253 child, as specified in the appropriation act, for at least 60 percent of the unserved at-risk four-year-olds
1254 and five-year-olds who are not eligible to attend kindergarten in the Commonwealth, such 60 percent to

~~be calculated by adding services for 30 percent more of the unserved at-risk children to the 30 percent of unserved at-risk children in each locality provided funding in the appropriation act.~~

~~Local school boards may elect to serve more than 60 percent of the at-risk four-year-olds and may use federal funds or local funds for this expansion or may seek funding through this grant program for such purposes. Grants may be awarded, if funds are available in excess of the funding for the 60 percent allocation, to expand services to at-risk four-year-olds beyond the 60 percent goal.~~

~~In order for a locality to qualify for these grants, the local governing body shall commit to providing the required matching funds, based on the composite index of local ability to pay. Localities may use, for the purposes of meeting the local match, local or other nonstate expenditures for existing qualifying programs and shall also continue to pursue and coordinate other funding sources, including child care subsidies. Funds received through this program shall be used to supplement, not supplant, any local funds currently provided for preschool programs within the locality.~~

~~D.~~ The General Assembly finds that local autonomy in making decisions on local educational needs and priorities results in effective grass-roots efforts to improve education in the Commonwealth's public schools only when coupled with sufficient state funding; to this end, the following block grant program is hereby established. With such funds as are provided in the appropriation act, the Department of Education shall distribute block grants to localities to enable compliance with the Commonwealth's requirements for school divisions in effect on January 1, 1995. Therefore, for the purpose of such compliance, the block grant herein established shall consist of a sum equal to the amount appropriated in the appropriation act for the covered programs, including the at-risk add-on program; dropout prevention, specifically Project YES; Project Discovery; English as a second language programs, including programs for overage, nonschooled students; Advancement Via Individual Determination (AVID); the Homework Assistance Program; programs initiated under the Virginia Guaranteed Assistance Program, except that such funds shall not be used to pay any expenses of participating students at institutions of higher education; Reading Recovery; and school/community health centers. Each school board may use any funds received through the block grant to implement the covered programs and other programs designed to save the Commonwealth's children from educational failure.

1282 ~~E-D.~~ In order to reduce pupil/teacher ratios and class sizes in elementary schools, from such funds
1283 as may be appropriated for this purpose, each school board may employ additional classroom teachers,
1284 remedial teachers, and reading specialists for each of its elementary schools over the requirements of the
1285 Standards of Quality. State and local funding for such additional classroom teachers, remedial teachers,
1286 and reading specialists shall be apportioned as provided in the appropriation act.

1287 ~~F-E.~~ Pursuant to a turnaround specialist program administered by the Department of Education,
1288 local school boards may enter into agreements with individuals to be employed as turnaround specialists
1289 to address those conditions at the school that may impede educational progress and effectiveness and
1290 academic success. Local school boards may offer such turnaround specialists or other administrative
1291 personnel incentives such as increased compensation, improved retirement benefits in accordance with
1292 Chapter 6.2 (§ 51.1-617 et seq.) of Title 51.1, increased deferred compensation in accordance with § 51.1-
1293 603, relocation expenses, bonuses, and other incentives as may be determined by the board.

1294 ~~G-F.~~ The General Assembly finds that certain schools have particular difficulty hiring teachers for
1295 certain subject areas and that the need for such teachers in these schools is particularly strong. Accordingly
1296 in an effort to attract and retain high quality teachers, local school boards may offer instructional personnel
1297 serving in such schools as a member of a middle school teacher corps administered by the Department of
1298 Education incentives such as increased compensation, improved retirement benefits in accordance with
1299 Chapter 6.2 (§ 51.1-617 et seq.) of Title 51.1, increased deferred compensation in accordance with § 51.1-
1300 603, relocation expenses, bonuses, and other incentives as may be determined by the board.

1301 For purposes of this subsection, "middle school teacher corps" means licensed instructional
1302 personnel who are assigned to a local school division to teach in a subject matter in grades six, seven, or
1303 eight where there is a critical need, as determined by the Department of Education. The contract between
1304 such persons and the relevant local school board shall specify that the contract is for service in the middle
1305 school teacher corps.

1306 CHAPTER 14.1.

1307 EARLY CHILDHOOD CARE AND EDUCATION.

1308 Article 1.

1309 General Provisions.

1310 **§ 22.1-289.02. Definitions.**

1311 As used in this chapter, unless the context requires a different meaning:

1312 "Child day center" means a child day program offered to (i) two or more children under the age of
1313 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more
1314 children at any location.

1315 "Child day program" means a regularly operating service arrangement for children where, during
1316 the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
1317 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

1318 "Early childhood care and education entity" means a child day center, family day home, or family
1319 day system serving children under the age of five.

1320 "Family day home" means a child day program offered in the residence of the provider or the home
1321 of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's
1322 own children and any children who reside in the home, when at least one child receives care for
1323 compensation. The provider of a licensed or registered family day home shall disclose to the parents or
1324 guardians of children in their care the percentage of time per week that persons other than the provider
1325 will care for the children. Family day homes serving five through 12 children, exclusive of the provider's
1326 own children and any children who reside in the home, shall be licensed. However, no family day home
1327 shall care for more than four children under the age of two, including the provider's own children and any
1328 children who reside in the home, unless the family day home is licensed or voluntarily registered.
1329 However, a family day home where the children in care are all related to the provider by blood or marriage
1330 shall not be required to be licensed.

1331 "Family day system" means any person who approves family day homes as members of its system;
1332 who refers children to available family day homes in that system; and who, through contractual
1333 arrangement, may provide central administrative functions including, but not limited to, training of
1334 operators of member homes; technical assistance and consultation to operators of member homes;

inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Head Start provider" means a public or private, nonprofit or for-profit organization or agency, including any community-based organization, as such term is defined in 20 U.S.C. § 7801, to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program.

"Publicly funded provider" means any (i) educational program provided by a school division or local government to children between birth and age five or (ii) child day program that receives state or federal funds in support of its operations that serves three or more unrelated children. "Publicly funded provider" does not include any program for which the sole source of public funding is the federal Child and Adult Care Food Program (CACFP) administered by the U.S. Department of Agriculture Food and Nutrition Service.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Superintendent.

§ 22.1-289.03. Early childhood care and education system; establishment.

A. The Board shall establish a statewide unified public-private system for early childhood care and education in the Commonwealth to ensure that every child has the opportunity to enter kindergarten healthy and ready to learn. Such system shall be administered by the Board, the Superintendent, and the Department and shall be formed, implemented, and sustained through a structure that engages and leverages both state-level authority and regional-level public-private partnership assets.

B. It is the intent of the General Assembly that the system established pursuant to subsection A shall (i) provide families with coordinated access for referral to early childhood education programs, (ii) provide families with easy-to-understand information about the quality of publicly funded early childhood care and education programs, (iii) establish expectations for the continuous improvement of early childhood care and education programs, and (iv) establish shared expectations for early childhood care and education programs among the Department of Education, the Department of Social Services, local school divisions, and state and regional stakeholders.

C. The system established pursuant to subsection A shall consist of a combination of programs offered through (i) the Virginia Preschool Initiative, pursuant to § 22.1-289.09, or any other school-based early childhood care and education program; (ii) licensed programs, pursuant to Article 3 (§ 22.1-289.010 et seq.); and (iii) unlicensed programs, pursuant to Article 4 (§ 22.1-289.030 et seq.).

§ 22.1-289.04. Early childhood care and education advisory committee.

The Board shall establish an early childhood care and education advisory committee to advise the Board on programs, systems, and regulations established pursuant to this chapter. The advisory committee shall include the following members, who shall represent geographically diverse areas: (i) two representatives of publicly funded licensed providers, including at least one for-profit provider; (ii) one representative of an early childhood care and education entity that is not a publicly funded provider; (iii) two representatives of early childhood care and education entities that are license-exempt pursuant to Article 4 (§ 22.1-289.030 et seq.), including one representative of an early childhood care and education entity that is exempt from licensure pursuant to § 22.1-289.031; (iv) three representatives of Head Start providers, one of which shall be operated by a local school division, and two of which shall not be operated by a local school division; (v) two representatives from local school divisions or local school boards operating early childhood programs other than Head Start providers; (vi) two representatives of nonprofit advocacy organizations in the Commonwealth that focus on early childhood care and education; (vii) one representative of a family day home that is a publicly funded provider; (viii) two professionals or faculty members from an institution of higher education in the Commonwealth who have child development or early childhood education expertise; (ix) one representative from the Virginia chapter of the American Academy of Pediatrics; (x) one representative from an advocacy or service organization that focuses on serving children with disabilities; (xi) one representative from a business in the Commonwealth; (xii) one parent of a child currently enrolled in a preschool program offered by a publicly funded provider; (xiii) one representative of the Virginia Council on Private Education; (xiv) one representative from a statewide nonprofit association in the Commonwealth whose membership includes both before-school and afterschool nonprofit child care providers and nonprofit preschool providers; (xv) one representative from a nonprofit entity that provides child care resource and referral services related to the operation of early

childhood care and education programs; and (xvi) such other members as the Board may deem appropriate.
The Commissioner of Social Services or his designee, the Secretary of Education or his designee, the
Secretary of Health and Human Resources or his designee, the Superintendent of Public Instruction or his
designee, the Commissioner of the Department of Health or his designee, the Commissioner of the
Department of Behavioral Health and Development Services or his designee, and the Director of the Head
Start Collaboration Office shall serve ex officio without voting privileges. The Board shall establish
bylaws for such advisory committee that include term length and limits for members.

§ 22.1-289.05. Quality rating and improvement system; establishment.

A. The Board shall establish a uniform quality rating and improvement system designed to provide
parents and families with information about the quality and availability of publicly funded providers. Such
system shall include:

1. Service provision and performance targets for children from birth to age five that align with
standards for kindergarten readiness and early elementary grades;
2. Consistent quality standards;
3. Outcome-based measurements; and
4. Incentives to encourage participation and improvement.

B. All publicly funded providers shall be required to participate in the quality rating and
improvement system established pursuant to subsection A. All other child day programs may participate
in such system. Any participation in such system shall comply with all applicable federal laws and
regulations, including the federal Head Start Act (42 U.S.C. § 9801 et seq.), as amended, and associated
regulations.

C. The Board shall establish consequences for publicly funded providers that fail to participate in
the quality rating and improvement system established pursuant to subsection A or persistently fail to meet
minimal quality standards.

§ 22.1-289.06. Confidential records and information; penalty.

A. The records, information, and statistical registries of the Department and of all child day
programs and family day systems concerning services to or on behalf of individuals shall be confidential

information, provided that the Superintendent, the Board, and their agents or designees shall have access to such records, information, and statistical registries, and that such records, information, and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

It shall be unlawful for any officer, agent, or employee of any child day program or family day system; for the Superintendent, the State Board, or their agents, designees, or employees; for any person who has held any such position; and for any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § 63.2-105. Every violation of this section shall constitute a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of services provided in this chapter is made to the Department by a person who does not have a legitimate interest, the Superintendent shall not provide the record or information unless permitted by state or federal law or regulation.

§ 22.1-289.07. Information related to shaken baby syndrome.

The Department shall make information about shaken baby syndrome, its effects, and resources for help and support for caretakers in a printable format, and information about how to acquire information about shaken baby syndrome and its effects in an audiovisual format, available to the public on its website. Such information shall be provided to every child day program and family day system required to be licensed by the Department at the time of initial licensure and upon request.

§ 22.1-289.08. Board to investigate child day programs at direction of Governor.

Whenever the Governor considers it proper or necessary to investigate the management of any child day program or family day system licensed by or required to be inspected by the Board under the provisions of this chapter, he may direct the Board, or any committee or agent thereof, to make the investigation. The Board, committee, or agent designated by the Governor shall have power to administer oaths and to summon officers, employees, or other persons to attend as witnesses and to enforce their attendance and to compel them to produce documents and give evidence.

Article 2.

Virginia Preschool Initiative.

§ 22.1-289.09. Programs designed to promote educational opportunities.

A. The General Assembly finds that effective prevention programs designed to assist children at risk of school failure and dropout are practical mechanisms for reducing violent and criminal activity and for ensuring that Virginia's children will reach adulthood with the skills necessary to succeed; to this end, the following program is hereby established. With such funds as are appropriated for this purpose, the General Assembly hereby establishes the Virginia Preschool Initiative as a grant program to be disbursed by the Department of Education to schools and community-based organizations to provide quality preschool programs for at-risk three-year-olds and four-year-olds who are unserved by Head Start programs and for at-risk five-year-olds who are not eligible to attend kindergarten.

B. Grants shall be used to provide at least half-day services for the length of the school year for at-risk three-year-old and four-year-old children who are unserved by Head Start programs and for at-risk five-year-olds who are not eligible to attend kindergarten. The services shall include quality preschool education; health services, including nutrition access programs; social services; parental involvement, including activities to promote family literacy; and transportation.

C. The guidelines for quality preschool education and criteria for preschool education services may be differentiated according to the agency providing the services in order to comply with various relevant federal or state requirements.

1. Any classroom that exceeds benchmarks set by the Board shall be staffed as follows: (i) at least one teacher shall be provided for any classroom with 10 students or fewer students; (ii) if the average daily membership in any classroom exceeds 10 students but does not exceed 20 students, at least one full-time teacher's aide shall be assigned to the classroom; and (iii) the maximum classroom size shall be 20 students.

2. Any classroom that does not exceed benchmarks set by the Board shall be staffed as follows: (i) at least one teacher shall be provided for any classroom with nine or fewer students; (ii) if the average daily membership in any classroom exceeds nine students but does not exceed 18 students, a full-time

teacher's aide shall be assigned to such classroom; and (iii) the maximum classroom size shall be 18 students.

D. School divisions and other grantees may apply for and be granted waivers from these guidelines by the Department of Education. Grants shall be distributed, with such funds as are appropriated for this purpose, based on an allocation formula providing the state share of the grant per child, as specified in the appropriation act, for at least 60 percent of the unserved at-risk four-year-olds and five-year-olds who are not eligible to attend kindergarten in the Commonwealth, such 60 percent to be calculated by adding services for 30 percent more of the unserved at-risk children to the 30 percent of unserved at-risk children in each locality provided funding in the appropriation act.

E. Local school boards may elect to serve more than 60 percent of the at-risk four-year-olds and may use federal funds or local funds for this expansion or may seek funding through this grant program for such purposes. Grants may be awarded, if funds are available in excess of the funding for the 60 percent allocation, to expand services to at-risk four-year-olds beyond the 60 percent goal.

F. In order for a locality to qualify for these grants, the local governing body shall commit to providing the required matching funds, based on the composite index of local ability to pay. Localities may use, for the purposes of meeting the local match, local or other nonstate expenditures for existing qualifying programs and shall also continue to pursue and coordinate other funding sources, including child care subsidies. Funds received through this program shall be used to supplement, not supplant, any local funds currently provided for preschool programs within the locality.

Article 3.

Licensure.

§ 22.1-289.010. Application fees; regulations and schedules; use of fees; certain facilities, centers and agencies exempt.

The Board is authorized to adopt regulations and schedules for fees to be charged for processing applications for licenses to operate child day programs and family day systems. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations based on the capacity of such facilities, centers, and agencies. Fees shall be used for the development and delivery of training for

operators and staff of child day programs and family day systems. Fees shall be expended for this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall not be applicable to facilities, centers, or agencies operated by federal entities.

The Board shall develop training programs for operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood educational organizations, state agencies and other trainers designated by the Board, and licensed child care providers. Training provided to operators and staffs of licensed child day programs shall include training and information regarding shaken baby syndrome, its effects, and resources for help and support for caretakers. To the maximum extent possible, the Board shall ensure that all provider interests are represented and that no single approach to training shall be given preference.

§ 22.1-289.011. Licenses required; issuance, expiration, and renewal; maximum number of participants or children; posting of licenses.

A. As used in this section, "person" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child day program or family day system.

B. Every person who constitutes, or who operates or maintains, a child day program or family day system shall obtain the appropriate license from the Superintendent, which may be renewed. The Superintendent, upon request, shall consult with, advise, and assist any person interested in securing and maintaining any such license. Each application for a license shall be made to the Superintendent, in such form as he may prescribe. It shall contain the name and address of the applicant and, if the applicant is an association, partnership, limited liability company, or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with other pertinent information as the Superintendent may require.

1522 C. The licenses shall be issued on forms prescribed by the Superintendent. Any two or more
1523 licenses may be issued for concurrent operation of more than one child day program or family day system,
1524 but each license shall be issued upon a separate form. Each license for a family day home or family day
1525 system and renewals thereof may be issued for periods of up to three successive years, unless sooner
1526 revoked or surrendered. Licenses issued to child day centers under this chapter shall have a duration of
1527 two years from date of issuance.

1528 D. The Superintendent may extend or shorten the duration of licensure periods for a child day
1529 program or family day system whenever, in his sole discretion, it is administratively necessary to
1530 redistribute the workload for greater efficiency in staff utilization.

1531 E. Each license shall indicate the maximum number of persons who may be cared for in the child
1532 day program or family day system for which it is issued.

1533 F. The license and any other documents required by the Superintendent shall be posted in a
1534 conspicuous place on the licensed premises.

1535 G. Every person issued a license that has not been suspended or revoked shall renew such license
1536 prior to its expiration.

1537 **§ 22.1-289.012. Local government to report business licenses issued to child day centers and**
1538 **family day homes.**

1539 The commissioner of the revenue or other local business license official shall report to the
1540 Department on a semiannual basis the name, address, and contact information of any child day center or
1541 family day home to which a business license was issued.

1542 **§ 22.1-289.013. Investigation on receipt of application.**

1543 Upon receipt of the application, the Superintendent shall cause an investigation to be made of the
1544 activities, services, and facilities of the applicant and of his character and reputation or, if the applicant is
1545 an association, partnership, limited liability company, or corporation, the character and reputation of its
1546 officers and agents, and upon receipt of the initial application, an investigation of the applicant's financial
1547 responsibility. The financial records of an applicant shall not be subject to inspection if the applicant
1548 submits an operating budget and at least one credit reference. The character and reputation investigation

upon application shall include background checks pursuant to § 22.1-289.036. Records that contain confidential proprietary information furnished to the Department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5.

§ 22.1-289.014. Variances.

The Superintendent may grant a variance to a regulation when the Superintendent determines that (i) a licensee or applicant for licensure as a child day program or family day system has demonstrated that the implementation of a regulation would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of children in care. The Superintendent shall review each allowable variance at least annually. At a minimum, this review shall address the impact of the allowable variance on persons in care, adherence by the licensee to any conditions attached, and the continuing need for the allowable variance.

§ 22.1-289.015. Voluntary registration of family day homes; inspections; investigation upon receipt of complaint; revocation or suspension of registration.

A. Any person who maintains a family day home serving fewer than five children, exclusive of the provider's own children and any children who reside in the home, may apply for voluntary registration. An applicant for voluntary registration shall file with the Superintendent, prior to beginning any such operation and thereafter biennially, an application which shall include, but not be limited to, the following:

1. The name, address, phone number, and social security number of the person maintaining the family day home;
2. The number and ages of the children to receive care;
3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information submitted to the Superintendent; and
4. Documentation that the background check requirements for registered family day homes in Article 5 (§ 22.1-289.034 et seq.) have been met.

B. The Board shall adopt regulations for voluntarily registered family day homes that include, but are not limited to:

1. The criteria and process for the approval of the certificate of registration;

1576 2. Requirements for a self-administered health and safety guidelines evaluation checklist;

1577 3. A schedule for fees to be paid by the providers to the contract organization or to the Department
1578 if it implements the provisions of this section for processing applications for the voluntary registration of
1579 family day homes. The charges collected shall be maintained for the purpose of recovering administrative
1580 costs incurred in processing applications and certifying such homes as eligible or registered;

1581 4. The criteria and process for the renewal of the certificate of registration; and

1582 5. The requirement that upon receipt of a complaint concerning a registered family day home, the
1583 Superintendent shall cause an investigation to be made, including on-site visits as he deems necessary, of
1584 the activities, services, and facilities. The person who maintains such home shall afford the Superintendent
1585 reasonable opportunity to inspect the operator's facilities and records and to interview any employees and
1586 any child or other person within his custody or control. Whenever a registered family day home is
1587 determined by the Superintendent to be in noncompliance with the regulations for voluntarily registered
1588 family day homes, the Superintendent shall give reasonable notice to the operator of the nature of the
1589 noncompliance and may thereafter revoke or suspend the registration.

1590 C. Upon receiving the application on forms prescribed by the Superintendent, and after having
1591 determined that the home has satisfied the requirements of the regulations for voluntarily registered family
1592 day homes, the Superintendent shall issue a certificate of registration to the family day home.

1593 D. The Superintendent shall contract in accordance with the requirements of the Virginia Public
1594 Procurement Act (§ 2.2-4300 et seq.) with qualified local agencies and community organizations to review
1595 applications and certify family day homes as eligible for registration, pursuant to the regulations for
1596 voluntarily registered family day homes. If no qualified local agencies or community organizations are
1597 available, the Superintendent shall implement the provisions of this section. For the purposes of this
1598 subsection, "qualified" means demonstrated ability to provide sound financial management and
1599 administrative services including application processing, maintenance of records and reports, technical
1600 assistance, consultation, training, monitoring, and random inspections.

1601 E. The scope of services in contracts shall include:

1. The identification of family day homes which may meet the standards for voluntary registration provided in subsection A; and

2. A requirement that the contract organization shall provide administrative services, including, but not limited to, processing applications for the voluntary registration of family day homes; certifying such homes as eligible for registration; providing technical assistance, training and consultation with family day homes; ensuring providers' compliance with the regulations for voluntarily registered family day homes, including monitoring and random inspections; and maintaining permanent records regarding all family day homes which it may certify as eligible for registration.

F. The contract organization, upon determining that a family day home has satisfied the requirements of the regulations for voluntarily registered family day homes, shall certify the home as eligible for registration on forms prescribed by the Superintendent. The Superintendent, upon determining that certification has been properly issued, may register the family day home.

G. The provisions of this section shall not apply to any family day home located in a county, city, or town in which the governing body provides by ordinance for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities pursuant to the provisions of § 15.2-914.

§ 22.1-289.016. Unlicensed and unregistered family day homes; notice to parents.

Every unlicensed, unregistered family day home shall provide written notice to the parents of every child receiving care, at the time the family day home begins providing care for the child, stating that the family day home is not regulated by the Department and referring parents to a website maintained by the Department for additional information regarding licensed, registered, and unlicensed, unregistered family day homes. The provisions of this section shall not apply to an unlicensed, unregistered family day home in which all of the children receiving care are related to the provider by blood or marriage.

§ 22.1-289.017. Compliance with Uniform Statewide Building Code.

Buildings licensed as child day programs or family day systems shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

§ 22.1-289.018. Inspections and interviews.

1629 A. Applicants for licensure and licensees shall at all times afford the Superintendent reasonable
1630 opportunity to inspect all of their facilities, books and records, and to interview their agents and employees
1631 and any person living or participating in such facilities, or under their custody, control, direction, or
1632 supervision. Interviews conducted pursuant to this section with persons living or participating in a facility
1633 operated by or under the custody, control, direction, or supervision of an applicant for licensure or a
1634 licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and
1635 (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws
1636 and regulations, including ascertaining if assessments and reassessments of residents' cognitive and
1637 physical needs are performed as required under regulations of the Board.

1638 B. All licensed child day programs and family day systems shall be inspected not less than twice
1639 annually, and one of those inspections shall be unannounced.

1640 C. The activities, services, and facilities of each applicant for renewal of his license as a child day
1641 program or family day system shall be subject to an inspection or examination by the Superintendent to
1642 determine if he is in compliance with current regulations of the Board.

1643 D. The Superintendent may authorize such other announced or unannounced inspections as the
1644 Superintendent considers appropriate.

1645 **§ 22.1-289.019. Inspections of child day programs and family day systems; prioritization.**

1646 The Superintendent shall prioritize inspections of child day programs and family day systems in
1647 the following order: (i) inspections conducted in response to a complaint involving a licensed, registered,
1648 license-exempt, or unlicensed child day program or family day system; (ii) inspections of licensed or
1649 registered child day programs and family day systems that are not conducted in response to a complaint;
1650 (iii) inspections of license-exempt or unlicensed child day programs and family day systems that have
1651 entered into a contract with the Department or its agents or designees or a local department of social
1652 services to provide child care services funded by the Child Care and Development Block Grant, other than
1653 inspections conducted in response to a complaint; and (iv) inspections of license-exempt and unlicensed
1654 child day programs and family day systems that are not conducted in response to a complaint.

§ 22.1-289.020. Issuance or refusal of license; notification; provisional and conditional licenses.

Upon completion of his investigation, the Superintendent shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services, and facilities as are reasonably conducive to the welfare of the children over whom he may have control; (ii) at the time of initial application, the applicant has submitted an operating budget and at least one credit reference; (iii) he is, or the officers and agents of the applicant if it is an association, partnership, limited liability company, or corporation are, of good character and reputation; and (iv) the applicant and agents comply with the provisions of this chapter. Otherwise, the license shall be denied. Immediately upon taking final action, the Superintendent shall notify the applicant of such action.

Upon completion of the investigation for the renewal of a license, the Superintendent may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure requirements. The provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. A copy of the provisional license shall be prominently displayed by the provider at each public entrance of the subject facility and shall be printed in a clear and legible size and style. In addition, the facility shall be required to prominently display next to the posted provisional license a notice that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility and on the facility's website, if applicable.

At the discretion of the Superintendent, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

§ 22.1-289.021. Records and reports.

Every licensed or registered child day program and family day system shall keep such records and make such reports to the Superintendent as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Superintendent.

§ 22.1-289.022. Enforcement and sanctions; child day programs and family day systems; revocation and denial.

A. The Superintendent may revoke or deny the renewal of the license of any child day program or family day system that violates any provision of this chapter or fails to comply with the limitations and standards set forth in its license.

B. Pursuant to the procedures set forth in subsection C, and in addition to the authority for other disciplinary actions provided in this title, the Superintendent may issue a notice of summary suspension of the license of any child day program or family day system, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the child day program or family day system that pose an immediate and substantial threat to the health, safety, and welfare of the children receiving care, and the Superintendent believes the operation of the child day program or family day system should be suspended during the pendency of such proceeding.

C. A notice of summary suspension issued by the Superintendent to a child day program or family day system shall set forth (i) the summary suspension procedures; (ii) hearing and appeal rights as provided in this subsection; (iii) facts and evidence that formed the basis for the summary suspension; and (iv) the time, date, and location of a hearing to determine whether the summary suspension is appropriate. Such notice shall be served on the child day program or family day system or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the child day program or family day system.

The summary suspension hearing shall be presided over by a hearing officer selected by the Superintendent from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of summary suspension; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. Within 10 business days after such hearing, the hearing officer shall provide to the Superintendent written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended.

1708 Within 10 business days of the receipt of the hearing officer's findings, conclusions, and
1709 recommendation, the Superintendent may issue a final order of summary suspension or an order that such
1710 summary suspension is not warranted by the facts and circumstances presented. The Superintendent shall
1711 adopt the hearing officer's recommended decision unless to do so would be an error of law or Department
1712 policy. In the event that the Superintendent rejects the hearing officer's findings, conclusions, or
1713 recommendation, the Superintendent shall state with particularity the basis for rejection. In issuing a final
1714 order of summary suspension, the Superintendent may choose to suspend the license of the child day
1715 program or family day system or to suspend only certain authority of the child day program or family day
1716 system to operate, including the authority to provide certain services or perform certain functions that the
1717 Superintendent determines should be restricted or modified in order to protect the health, safety, or welfare
1718 of the children receiving care. A final order of summary suspension shall include notice that the licensee
1719 may appeal the Superintendent's decision to the appropriate circuit court no later than 10 days following
1720 service of the order. The sole issue before the court shall be whether the Superintendent had reasonable
1721 grounds to require the licensee to cease operations during the pendency of the concurrent revocation,
1722 denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected
1723 by the outcome of any hearing on the appropriateness of the summary suspension.

1724 A copy of any final order of summary suspension shall be prominently displayed by the child day
1725 program or family day system at each public entrance of the facility, or in lieu thereof, the child day
1726 program or family day system may display a written statement summarizing the terms of the order in a
1727 prominent location, printed in a clear and legible size and typeface, and identifying the location within the
1728 facility where the final order of summary suspension may be reviewed.

1729 The willful and material failure to comply with the final order of summary suspension constitutes
1730 a violation of subdivision 3 of § 22.1-298.027.

1731 The provisions of this subsection shall not apply to any child day program or family day system
1732 operated by an agency of the Commonwealth, which shall instead be governed by the provisions of
1733 subsection D.

D. Whenever the Superintendent issues a summary order of suspension of the license to operate a child day program or family day system operated by an agency of the Commonwealth:

1. Before such summary order of suspension shall take effect, the Superintendent shall issue to the child day program or family day system a notice of summary order of suspension setting forth (i) the procedures for a hearing and right of review as provided in this section and (ii) facts and evidence that formed the basis on which the summary order of suspension is sought. Such notice shall be served on the licensee or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the licensee. The notice shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the notice of the summary order of suspension and shall be convened by the Superintendent or his designee. After such hearing, the Superintendent may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented.

2. A final order of summary suspension shall include notice that the licensee may request, in writing and within three business days after receiving the Superintendent's decision, that the Superintendent refer the matter to the Secretary of Education for resolution within three business days of the referral. Any determination by the Secretary shall be final and not subject to judicial review. If the final order of summary suspension is upheld, it shall take effect immediately, and a copy of the final order of summary suspension shall be prominently displayed by the licensee at each public entrance of the facility. Any concurrent revocation, denial, or other proceedings shall not be affected by the outcome of any determination by the Secretary.

§ 22.1-289.023. Enforcement and sanctions; special orders; civil penalties.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Superintendent may issue a special order (i) for violation of any of the provisions of this chapter, § 54.1-3408, or any regulation adopted under any provision of this chapter which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in a child day program or family

day system. Notice of the Superintendent's intent to take any of the actions enumerated in subdivisions B 1 through 6 shall be provided by the Department, and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. Actions set forth in subsection B may be appealed by (a) a child day program or family day system operated by an agency of the Commonwealth in accordance with § 22.1-289.025 or (b) any other child day program or family day system in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Superintendent shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

B. The Superintendent may take the following actions regarding child day programs and family day systems through the issuance of a special order and may require a copy of the special order provided by the Department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of children are at risk;

2. Reduce licensed capacity or prohibit new admissions when the Superintendent concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;

3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Superintendent concludes that the lack of such training has led directly to violations of regulations;

4. Assess civil penalties of not more than \$500 per inspection upon finding that the child day program or family day system is substantially out of compliance with the terms of its license and the health and safety of children are at risk; however, no civil penalty shall be imposed pursuant to this subdivision on any child day program or family day system operated by an agency of the Commonwealth;

5. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

1788 6. Prevent licensees who are substantially out of compliance with the licensure terms or in violation
1789 of the regulations from receiving public funds.

1790 C. The Board shall adopt regulations to implement the provisions of this section.

1791 **§ 22.1-289.024. Appeal from refusal, denial of renewal, or revocation of license.**

1792 A. Whenever the Superintendent refuses to issue a license or to renew a license or revokes a license
1793 for a child day program or family day system operated by an agency of the Commonwealth, the provisions
1794 of § 22.1-289.025 shall apply. Whenever the Superintendent refuses to issue a license or to renew a license
1795 or revokes a license for any child day program or family day system other than a child day program or
1796 family day system operated by an agency of the Commonwealth, the provisions of the Administrative
1797 Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the Superintendent's
1798 intent to refuse to issue or renew, or revoke a license shall be received in writing from the child day
1799 program or family day system operator within 15 days of the date of receipt of the notice. Judicial review
1800 of a final review agency decision shall be in accordance with the provisions of the Administrative Process
1801 Act. No stay may be granted upon appeal to the Virginia Supreme Court.

1802 B. In every appeal to a court of record, the Superintendent shall be named defendant.

1803 C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for
1804 operation without a license.

1805 D. When issuance or renewal of a license for a child day program or family day system has been
1806 refused by the Superintendent, the applicant shall not thereafter for a period of six months apply again for
1807 such license unless the Superintendent in his sole discretion believes that there has been such a change in
1808 the conditions on account of which he refused the prior application as to justify considering the new
1809 application. When an appeal is taken by the applicant pursuant to subsection A, the six-month period shall
1810 be extended until a final decision has been rendered on appeal.

1811 **§ 22.1-289.025. Right to appeal notice of intent; child day programs and family day systems**
1812 **operated by agencies of the Commonwealth.**

1813 Any child day program or family day system operated by an agency of the Commonwealth shall
1814 have the right to appeal any notice of intent as follows:

1. Within 30 days after receiving a notice of intent to impose a sanction, the licensee shall request in writing that the Superintendent review the intended agency action and may submit, together with such request, relevant information, documentation, or other pertinent data supporting its appeal. The Superintendent shall issue a decision within 60 days after receiving the request and shall have the authority to uphold the sanction or take whatever action he deems appropriate to resolve the controversy.

2. If the child day program or family day system disputes the Superintendent's decision, the licensee shall request, within 30 days of receiving the Superintendent's decision, that the Superintendent refer the matter to the Secretary of Education. The Secretary shall issue a decision within 60 days of receiving the request for review. The Secretary's decision shall be final and shall not be subject to review.

§ 22.1-289.026. Injunction against operation without license.

Any circuit court having jurisdiction in the county or city where the principal office of any child day program or family day system is located shall, at the suit of the Superintendent, have jurisdiction to enjoin its operation without a license required by this chapter.

§ 22.1-289.027. Offenses; penalty.

Any person, and each officer and each member of the governing board of any association or corporation that operates a child day program or family day system, shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Superintendent in the discharge of his duties under this chapter;

2. Makes to the Superintendent or any representative of the Superintendent any report or statement, with respect to the operation of any child day program or family day system, that is known by such person to be false or untrue;

3. Operates or engages in the conduct of a child day program or family day system without first obtaining a license as required by this chapter or after such license has been revoked or suspended or has expired and not been renewed. No violation shall occur if the agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or

1842 4. Operates or engages in the conduct of a child day program or family day system serving more
1843 persons than the maximum stipulated in the license.

1844 **§ 22.1-289.028. Misleading advertising prohibited.**

1845 No child day program or family day system shall make, publish, disseminate, circulate, or place
1846 before the public or cause, directly or indirectly, to be made, published, disseminated, circulated or placed
1847 before the public in this Commonwealth, in a newspaper or other publication; in the form of a book, notice,
1848 handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter; or via electronic mail, website,
1849 automatic mailing list services (listservs), newsgroups, facsimile, chat rooms; or in any other way an
1850 advertisement of any sort regarding services or anything so offered to the public, which advertisement
1851 contains any promise, assertion, representation or statement of fact that is untrue, deceptive, or misleading.

1852 **§ 22.1-289.029. Duty of attorneys for the Commonwealth.**

1853 It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all
1854 violations of this chapter.

1855 Article 4.

1856 Unlicensed Programs.

1857 **§ 22.1-289.030. Exemptions from licensure.**

1858 A. The following programs are not child day programs and shall not be required to be licensed:

1859 1. A program of instructional experience in a single focus, such as, but not limited to, computer
1860 science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no
1861 child is allowed to attend for more than 25 days in any three-month period commencing with enrollment.
1862 This exemption does not apply if children merely change their enrollment to a different focus area at a site
1863 offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.

1864 2. Programs of instructional or recreational activities wherein no child under age six attends for
1865 more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child
1866 six years of age or above attends for more than six hours weekly when school is in session or 12 hours
1867 weekly when school is not in session. Competition, performances, and exhibitions related to the
1868 instructional or recreational activity shall be excluded when determining the hours of program operation.

1869 3. Instructional programs offered by private schools that serve school-age children and that satisfy
1870 compulsory attendance laws or provide services under the Individuals with Disabilities Education Act, as
1871 amended, and programs of school-sponsored extracurricular activities that are focused on single interests
1872 such as, but not limited to, music, sports, drama, civic service, or foreign language.

1873 4. Instructional programs offered by public schools that serve preschool-age children, satisfy
1874 compulsory attendance laws, or provide services under the Individuals with Disabilities Education Act, as
1875 amended, and programs of school-sponsored extracurricular activities that are focused on single interests
1876 such as, but not limited to, music, sports, drama, civic service, or foreign language.

1877 5. Early intervention programs for children eligible under Part C of the Individuals with
1878 Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per
1879 week.

1880 6. Practice or competition in organized competitive sports leagues.

1881 7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, Bar Mitzvah
1882 or Bat Mitzvah classes, and nurseries offered by religious institutions and provided for the duration of
1883 specified religious services or related activities to allow parents or guardians or their designees who are
1884 on site to attend such religious services and activities.

1885 8. A program of instructional or athletic experience operated during the summer months by, and
1886 as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-
1887 19 and administered by the Virginia Council for Private Education.

1888 B. The following child day programs shall not be required to be licensed:

1889 1. A child day center that has obtained an exemption pursuant to § 22.1-289.031.

1890 2. A program where, by written policy given to and signed by a parent or guardian, school-age
1891 children are free to enter and leave the premises without permission. A program that would qualify for
1892 this exemption except that it assumes responsibility for the supervision, protection, and well-being of
1893 several children with disabilities who are mainstreamed shall not be subject to licensure.

1894 3. A program that operates no more than a total of 20 program days in the course of a calendar
1895 year, provided that programs serving children under age six operate no more than two consecutive weeks
1896 without a break of at least a week.

1897 4. Child-minding services that are not available for more than three hours per day for any
1898 individual child offered on site in commercial or recreational establishments if the parent or guardian (i)
1899 can be contacted and can resume responsibility for the child's supervision within 30 minutes and (ii) is
1900 receiving or providing services or participating in activities offered by the establishment.

1901 5. A certified preschool or nursery school program operated by an accredited private school as set
1902 forth in § 22.1-19 and administered by the Virginia Council for Private Education that complies with the
1903 provisions of § 22.1-289.032.

1904 6. A program of recreational activities offered by local governments, staffed by local government
1905 employees, and attended by school-age children. Such programs shall be subject to safety and supervisory
1906 standards established by the local government offering the program.

1907 7. A program offered by a local school division, operated for no more than four hours per day,
1908 staffed by local school division employees, and attended by children who are at least three years of age
1909 and are enrolled in public school or a preschool program within such school division. Such programs shall
1910 be subject to safety and supervisory standards established by the local school division offering the
1911 program.

1912 8. Child-minding services offered by a business on the premises of the business to no more than
1913 four children under the age of 13 at any given time and for no more than eight hours per day, provided
1914 that the parent or guardian of every child receiving care is an employee of the business who is on the
1915 premises of the business and can resume responsibility for the child's supervision within 30 minutes upon
1916 request.

1917 C. Child day programs that are exempt from licensure pursuant to subsection B, except for child
1918 day programs that are exempt from licensure pursuant to subdivision B 1 or 5, shall:

1919 1. File with the Superintendent annually and prior to beginning operation of a child day program
1920 a statement indicating the intent to operate a child day program, identifying the specific provision of this

section relied upon for exemption from licensure, and certifying that the child day program has disclosed in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;

2. Report to the Superintendent all incidents involving serious physical injury to or death of children attending the child day program. Reports of serious physical injuries, which shall include any physical injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and

3. Post in a visible location on the premises notice that the child day program is operating as a program exempt from licensure with basic health and safety requirements but has no direct oversight by the Department.

D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, or 7 shall:

1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child day program whenever children are present or at any other location in which children attending the child day program are present;

2. Maintain daily attendance records that document the arrival and departure of all children;

3. Have an emergency preparedness plan in place;

4. Comply with all applicable laws and regulations governing transportation of children; and

5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

E. The Superintendent shall inspect child day programs that are exempt from licensure pursuant to subsection B to determine compliance with the provisions of this section only upon receipt of a complaint, except as otherwise provided by law.

F. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Superintendent.

§ 22.1-289.031. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief.

1947 A. Notwithstanding any other provisions of this chapter, a child day center, including a child day
1948 center operated or conducted under the auspices of a religious institution, shall be exempt from the
1949 licensure requirements of this chapter, but shall comply with the provisions of this section unless it chooses
1950 to be licensed. If such religious institution chooses not to be licensed, it shall file with the Superintendent,
1951 prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate
1952 a child day center, certification that the child day center has disclosed in writing to the parents or guardians
1953 of the children in the center the fact that it is exempt from licensure and has posted the fact that it is exempt
1954 from licensure in a visible location on the premises, the qualifications of the personnel employed therein,
1955 and documentary evidence that:

1956 1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance
1957 with § 501(c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and
1958 exclusively occupied by the religious institution is exempt from local taxation.

1959 2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions
1960 thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever
1961 is appropriate, have inspected the physical facilities of the child day center and have determined that the
1962 center is in compliance with applicable laws and regulations with regard to food service activities, health
1963 and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform
1964 Statewide Building Code.

1965 3. The child day center employs supervisory personnel according to the following ratio of staff to
1966 children:

- 1967 a. One staff member to four children from ages zero to 16 months.
1968 b. One staff member to five children from ages 16 months to 24 months.
1969 c. One staff member to eight children from ages 24 months to 36 months.
1970 d. One staff member to 10 children from ages 36 months to five years.
1971 e. One staff member to 20 children from ages five years to nine years.
1972 f. One staff member to 25 children from ages nine years to 12 years.

1973 Staff shall be counted in the required staff-to-children ratios only when they are directly
1974 supervising children. In each grouping of children, at least one adult staff member shall be regularly
1975 present. However, during designated daily rest periods and designated sleep periods of evening and
1976 overnight care programs, for children ages 16 months to six years, only one staff member shall be required
1977 to be present with the children under supervision. In such cases, at least one staff member shall be
1978 physically present in the same space as the children under supervision at all times. Other staff members
1979 counted for purposes of the staff-to-child ratio need not be physically present in the same space as the
1980 resting or sleeping children, but shall be present on the same floor as the resting or sleeping children and
1981 shall have no barrier to their immediate access to the resting or sleeping children. The staff member who
1982 is physically present in the same space as the sleeping children shall be able to summon additional staff
1983 counted in the staff-to-child ratio without leaving the space in which the resting or sleeping children are
1984 located.

1985 Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under
1986 the supervision of an adult staff member. Adult staff members shall supervise no more than two staff
1987 members under 18 years of age at any given time.

1988 4. Each person in a supervisory position has been certified by a practicing physician or physician
1989 assistant to be free from any disability which would prevent him from caring for children under his
1990 supervision.

1991 5. The center is in compliance with the requirements of:

1992 a. This section.

1993 b. Section 22.1-289.039 relating to background checks.

1994 c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.

1995 d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or
1996 commercial driver's license; Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle
1997 inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as defined in
1998 § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint
1999 devices.

2000 6. The following aspects of the child day center's operations are described in a written statement
2001 provided to the parents or guardians of the children in the center and made available to the general public:
2002 physical facilities, enrollment capacity, food services, health requirements for the staff, and public liability
2003 insurance.

2004 7. The individual seeking to operate the child day center is not currently ineligible to operate
2005 another child day program due to a suspension or revocation of his license or license exemption for reasons
2006 involving child safety or any criminal conviction, including fraud, related to such child day program.

2007 8. A person trained and certified in first aid and cardiopulmonary resuscitation (CPR) will be
2008 present at the child day center whenever children are present or at any other location in which children
2009 attending the child day center are present.

2010 9. The child day center is in compliance with all safe sleep guidelines recommended by the
2011 American Academy of Pediatrics.

2012 B. The center shall establish and implement procedures for:

2013 1. Hand washing by staff and children before eating and after toileting and diapering.

2014 2. Appropriate supervision of all children in care, including daily intake and dismissal procedures
2015 to ensure safety of children.

2016 3. A daily simple health screening and exclusion of sick children by a person trained to perform
2017 such screenings.

2018 4. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46
2019 regarding the immunization of children against certain diseases.

2020 5. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards,
2021 including providing and maintaining sand or other cushioning material under playground equipment.

2022 6. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

2023 7. Ensuring that all incidents involving serious physical injury to or death of children attending the
2024 child day center are reported to the Superintendent. Reports of serious physical injuries, which shall
2025 include any physical injuries that require an emergency referral to an offsite health care professional or

2026 treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one
2027 business day after the death occurred.

2028 C. The Superintendent may perform on-site inspections of religious institutions to confirm
2029 compliance with the provisions of this section and to investigate complaints that the religious institution
2030 is not in compliance with the provisions of this section. The Superintendent may revoke the exemption
2031 for any child day center in serious or persistent violation of the requirements of this section. If a religious
2032 institution operates a child day center and does not file the statement and documentary evidence required
2033 by this section, the Superintendent shall give reasonable notice to such religious institution of the nature
2034 of its noncompliance and may thereafter take such action as he determines appropriate, including a suit to
2035 enjoin the operation of the child day center.

2036 D. Any person who has reason to believe that a child day center falling within the provisions of
2037 this section is not in compliance with the requirements of this section may report the same to the
2038 Department, the local health department, or the local fire marshal, each of which may inspect the child
2039 day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take
2040 appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

2041 E. Nothing in this section shall prohibit a child day center operated by or conducted under the
2042 auspices of a religious institution from obtaining a license pursuant to this chapter.

2043 **§ 22.1-289.032. Certification of preschool or nursery school programs operated by accredited**
2044 **private schools; provisional certification; annual statement and documentary evidence required;**
2045 **enforcement; injunctive relief.**

2046 A. A preschool or nursery school program operated by a private school accredited by an accrediting
2047 organization recognized by the Board pursuant to § 22.1-19 shall be exempt from licensure under this
2048 chapter if it complies with the provisions of this section and meets the requirements of subsection B.

2049 B. A school described in subsection A shall meet the following conditions in order to be exempt
2050 under this subsection:

2051 1. The school offers kindergarten or elementary school instructional programs that satisfy
2052 compulsory school attendance laws, and children below the age of compulsory school attendance also
2053 participate in such instructional programs;

2054 2. The number of pupils in the preschool program does not exceed 12 pupils for each instructional
2055 adult, or if operated as a Montessori program with mixed age groups of three-year-old to six-year-old
2056 children, the number of pupils in the preschool program does not exceed 15 pupils for each instructional
2057 adult;

2058 3. The school (i) maintains an average enrollment ratio during the current school year of five
2059 children age five or above to one four-year-old child, and no child in attendance is under age four, or (ii)
2060 does not allow children below the age of eligibility for kindergarten attendance to attend the preschool
2061 program for more than five hours per day, of which no more than four hours of instructional classes may
2062 be provided per day, and no child in attendance is under age three;

2063 4. The preschool offers instructional classes and does not hold itself out as a child care center or
2064 child day program;

2065 5. Children enrolled in the preschool do not attend more than five days per week; and

2066 6. The school maintains a certificate or permit issued pursuant to a local government ordinance
2067 that addresses health, safety, and welfare of the children.

2068 C. The school shall file with the Superintendent, prior to the beginning of the school year or
2069 calendar year, as the case may be, and thereafter, annually, a statement which includes the following:

2070 1. Intent to operate a certified preschool program;

2071 2. Documentary evidence that the school has been accredited as provided in subsection A;

2072 3. Documentation that the school has disclosed in writing to the parents, guardians, or persons
2073 having charge of a child enrolled in the school's preschool program and has posted in a visible location on
2074 the premises the fact of the program's exemption from licensure;

2075 4. Documentary evidence that the physical facility in which the preschool program will be
2076 conducted has been inspected (i) before initial certification by the local building official and (ii) within
2077 the 12-month period prior to initial certification and at least annually thereafter by the local health

department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an inspection report that documents that the facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code;

5. Documentation that the school has disclosed the following in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program, and in a written statement available to the general public: (i) the school facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code; (ii) the preschool program's maximum capacity; (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns, and staff health requirements; and (iv) a description of the school's public liability insurance, if any;

6. Qualifications of school personnel who work in the preschool program;

7. Certification that the school will report to the Superintendent all incidents involving serious injury to or death of children attending the preschool program. Reports of serious injuries, which shall include any injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and

8. Documentary evidence that the private school, as set forth in § 22.1-19 and administered by the Virginia Council for Private Education, requires all employees of the preschool and other school employees who have contact with the children enrolled in the preschool program to obtain a criminal record check as provided in § 22.1-289.035 to meet the requirements of § 22.1-296.3 as a condition of initial or continued employment.

All accredited private schools seeking certification of preschool programs shall file such information on forms prescribed by the Superintendent. The Superintendent shall certify all preschool programs of accredited private schools which comply with the provisions of subsection A. The Superintendent may conduct an annual inspection of such preschool programs to ensure compliance with the provisions of this section and conduct inspections to investigate complaints alleging noncompliance.

2105 D. A preschool program of a private school that has not been accredited as provided in subsection
2106 A shall be subject to licensure.

2107 E. If the preschool program of a private school that is accredited as provided in subsection A fails
2108 to file the statement and the required documentary evidence, the Superintendent shall notify the school of
2109 its noncompliance and may thereafter take such action as he determines appropriate, including notice that
2110 the program is required to be licensed.

2111 F. The revocation or denial of the certification of a preschool program shall be subject to appeal
2112 pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a final
2113 agency decision shall be in accordance with the provisions of the Administrative Process Act.

2114 G. Any person who has reason to believe that a private school falling within the provisions of this
2115 section is in noncompliance with any applicable requirement of this section may report the same to the
2116 Department, the local health department, or the local fire marshal, each of which may inspect the school
2117 for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter
2118 may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool
2119 program.

2120 H. Upon receipt of a complaint concerning a certified preschool program of an accredited private
2121 school, if for good cause shown there is reason to suspect that the school is in noncompliance with any
2122 provision of this section or the health or safety of the children attending the preschool program is in danger,
2123 the Superintendent shall cause an investigation to be made, including on-site visits as he deems necessary
2124 of the services, personnel, and facilities of the school's preschool program. The school shall afford the
2125 Superintendent reasonable opportunity to inspect the school's preschool program, records, and facility,
2126 and to interview the employees and any child or parent or guardian of a child who is or has been enrolled
2127 in the preschool program. If, upon completion of the investigation, it is determined that the school is in
2128 noncompliance with the provisions of this section, the Superintendent shall give reasonable notice to the
2129 school of the nature of its noncompliance and thereafter may take appropriate action as provided by law,
2130 including a suit to enjoin the operation of the preschool program.

2131 I. Failure of a private school to comply with the provisions of this section, or a finding that the
2132 health and safety of the children attending the preschool program are in clear and substantial danger upon
2133 the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to
2134 this section.

2135 J. If a private school operates a child day program outside the scope of its instructional classes
2136 during the school year or operates a child day program during the summer, the child day program shall be
2137 subject to licensure under the regulations adopted pursuant to § 22.1-289.046.

2138 K. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices
2139 of a private school from obtaining a license pursuant to this chapter.

2140 **§ 22.1-289.033. Inspection of unlicensed child care operations; inspection warrant.**

2141 In order to perform his duties under this chapter, the Superintendent may enter and inspect any
2142 unlicensed child care operation with the consent of the owner or person in charge, or pursuant to a warrant.
2143 Administrative search warrants for inspections of child care operations, based upon a petition
2144 demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having
2145 authority to issue criminal warrants whose territorial jurisdiction includes the child care operation to be
2146 inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for
2147 the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and
2148 refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such
2149 facts may include, without limitation, past refusals to permit inspection or facts establishing reason to
2150 believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations.
2151 Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child care
2152 operation is in violation of any provision of this chapter or any regulation adopted pursuant to this chapter,
2153 or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the
2154 administration of this chapter. The inspection of a child care operation that has been the subject of a
2155 complaint pursuant to § 22.1-289.042 shall have preeminent priority over any other inspections of child
2156 care operations to be made by the Superintendent unless the complaint on its face or in the context of
2157 information known to the Superintendent discloses that the complaint has been brought to harass, to

retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54. Such warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made.

Article 5.

Background Checks.

§ 22.1-289.034. Barrier crime; construction.

For purposes of this chapter, convictions for any barrier crime as defined in § 19.2-392.02 shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 22.1-289.035. Licensed child day centers, family day homes, and family day systems; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or its agents or designees to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a background check in accordance with subsection B prior to employment or beginning to serve as a volunteer and every five years thereafter.

B. Any individual required to undergo a background check in accordance with subsection A shall:

2183 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
2184 the subject of pending charges for any offense within or outside the Commonwealth and whether he has
2185 been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;
2186 2. Submit to fingerprinting and provide personal descriptive information described in subdivision
2187 B 2 of § 19.2-392.02; and
2188 3. Authorize the child day center, family day home, or family day system described in subsection
2189 A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 and
2190 any child abuse and neglect registry or equivalent registry maintained by any other state in which the
2191 individual has resided in the preceding five years for any founded complaint of child abuse or neglect
2192 against him.
2193 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision
2194 2 shall be forwarded by the Department or its designee or, in the case of a child day program operated by
2195 a local government, may be forwarded by the local law-enforcement agency through the Central Criminal
2196 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal
2197 history record information regarding such applicant. Upon receipt of an applicant's record or notification
2198 that no record exists, the Central Criminal Records Exchange shall forward the information to the
2199 Department or its designee, and the Department or its designee shall report to the child day center or
2200 family day home whether the applicant is eligible to have responsibility for the safety and well-being of
2201 children. In cases in which the record forwarded to the Department or its designee is lacking disposition
2202 data, the Department or its designee shall conduct research in whatever state and local recordkeeping
2203 systems are available in order to obtain complete data before reporting to the child day center, family day
2204 home, or family day system.
2205 C. The child day center, family day home, or family day system described in subsection A shall
2206 inform every individual required to undergo a background check pursuant to this section that he is entitled
2207 to obtain a copy of any background check report and to challenge the accuracy and completeness of any
2208 such report and obtain a prompt resolution before a final determination is made of the individual's
2209 eligibility to have responsibility for the safety and well-being of children.

2210 D. Any person making a materially false statement regarding the sworn statement or affirmation
2211 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

2212 E. Further dissemination of the background check information is prohibited other than to the
2213 Superintendent's representative or a federal or state authority or court as may be required to comply with
2214 an express requirement of law for such further dissemination.

2215 F. A person who complies in good faith with the provisions of this section shall not be liable for
2216 any civil damages for any act or omission in the performance of duties under this section unless the act or
2217 omission was the result of gross negligence or willful misconduct.

2218 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
2219 employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-
2220 57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed
2221 following the conviction, unless the person committed such offense while employed in a child day center
2222 or the object of the offense was a minor.

2223 H. Fees charged for the processing and administration of background checks pursuant to this
2224 section shall not exceed the actual cost to the state or the local law-enforcement agency of such processing
2225 and administration.

2226 I. Any individual required to undergo a background check pursuant to subsection A who is (i)
2227 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded
2228 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
2229 center, family day home, or family day system described in subsection A of such conviction or finding.

2230 **§ 22.1-289.036. Background check upon application for licensure, registration, or approval**
2231 **as child day center, family day home, or family day system; penalty.**

2232 A. Every (i) applicant for licensure as a child day center, family day home, or family day system,
2233 registration as a family day home, or approval as a family day home by a family day system; (ii) agent of
2234 an applicant for licensure as a child day center, family day home, or family day system, registration as a
2235 family day home, or approval as a family day home by a family day system at the time of application who
2236 is or will be involved in the day-to-day operations of the child day center, family day home, or family day

2237 system or who is or will be alone with, in control of, or supervising one or more of the children; and (iii)
2238 adult living in such child day center or family day home shall undergo a background check in accordance
2239 with subsection B prior to issuance of a license as a child day center, family day home, or family day
2240 system, registration as a family day home, or approval as a family day home by a family day system and
2241 every five years thereafter.

2242 B. Every person required to undergo a background check pursuant to subsection A shall:

2243 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
2244 the subject of any pending criminal charges for any offense within or outside the Commonwealth and
2245 whether or not he has been the subject of a founded complaint of child abuse or neglect within or outside
2246 the Commonwealth;

2247 2. Submit to fingerprinting and provide personal descriptive information described in subdivision
2248 B 2 of § 19.2-392.02; and

2249 3. Authorize the child day center, family day home, or family day system specified in subsection
2250 A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 and
2251 any child abuse and neglect registry or equivalent registry maintained by any other state in which the
2252 individual has resided in the preceding five years for any founded complaint of child abuse or neglect
2253 against him.

2254 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be
2255 forwarded by the Department or its designee or, in the case of a child day program operated by a local
2256 government, may be forwarded by the local law-enforcement agency through the Central Criminal
2257 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal
2258 history record information regarding the individual. Upon receipt of an individual's record or notification
2259 that no record exists, the Central Criminal Records Exchange shall forward the information to the
2260 Department or its designee. The Department or its designee shall report to the child day center, family day
2261 home, or family day system described in subsection A as to whether the individual is eligible to have
2262 responsibility for the safety and well-being of children. In cases in which the record forwarded to the

2263 Department or its designee is lacking disposition data, the Department or its designee shall conduct
2264 research in whatever state and local recordkeeping systems are available in order to obtain complete data.

2265 C. If any person specified in subsection A required to have a background check (i) has been
2266 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of
2267 child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver
2268 by the Superintendent pursuant to § 22.1-289.038, no license as a child day center, family day home, or
2269 family day system or registration as a family day home shall be granted by the Superintendent and no
2270 approval as a family day home shall be granted by the family day system.

2271 D. Information from a search of the central registry maintained pursuant to § 63.2-1515 and any
2272 child abuse and neglect registry or equivalent registry maintained by any other state in which the applicant,
2273 agent, or adult has resided in the preceding five years, authorized in accordance with subdivision B 3,
2274 shall be obtained prior to issuance of a license as a child day center, family day home, or family day
2275 system, registration as a family day home, or approval as a family day home by a family day system.

2276 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
2277 day center, family day home, or family day system, or shall be alone with, in control of, or supervising
2278 one or more children, without first having completed any required background check pursuant to
2279 subsection B.

2280 F. Any person making a materially false statement regarding the sworn statement or affirmation
2281 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

2282 G. If an individual is denied licensure, registration, or approval because of information from the
2283 central registry or any child abuse and neglect registry or equivalent registry maintained by any other state,
2284 or convictions appearing on his criminal history record, the Superintendent shall provide a copy of the
2285 information obtained from the central registry, any child abuse and neglect registry or equivalent registry
2286 maintained by any other state, or the Central Criminal Records Exchange to the individual.

2287 H. Further dissemination of the background check information is prohibited other than to the
2288 Superintendent's representative or a federal or state authority or court as may be required to comply with
2289 an express requirement of law for such further dissemination.

2290 I. Fees charged for the processing and administration of background checks pursuant to this section
2291 shall not exceed the actual cost to the state or the local law-enforcement agency of such processing and
2292 administration.

2293 **§ 22.1-289.037. Revocation or denial of renewal based on background checks; failure to**
2294 **obtain background check.**

2295 A. The Superintendent may revoke or deny renewal of a license or registration of a child day
2296 program or family day system, and a family day system may revoke the approval of a family day home,
2297 if the child day program, family day system, or approved family day home has knowledge that a person
2298 specified in § 22.1-289.035 or 22.1-289.036 required to have a background check (i) has been convicted
2299 of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse
2300 or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the
2301 Superintendent pursuant to § 22.1-289.038 or is not subject to the exceptions in subsection G of § 22.1-
2302 289.035, and the agency or home refuses to separate such person from employment or service or allows
2303 the household member to continue to reside in the home.

2304 B. Failure to obtain background checks pursuant to §§ 22.1-289.035 and 22.1-289.036 shall be
2305 grounds for denial, revocation, or termination of a license, registration, or approval or any contract with
2306 the Department or its agents or designees or a local department of social services to provide child care
2307 services to clients of the Department or its agents or designees or the local department of social services.
2308 No violation shall occur if the family day system, family day home, or child day center has applied for the
2309 background check timely and it has not been obtained due to administrative delay. The provisions of this
2310 section shall be enforced by the Department.

2311 **§ 22.1-289.038. Child day programs and family day systems; criminal conviction and waiver.**

2312 A. Any person who seeks to operate, volunteer, or work at a child day program or family day
2313 system and who is disqualified because of a criminal conviction or a criminal conviction in the background
2314 check of any other adult living in a family day home regulated by the Department, pursuant to § 22.1-
2315 289.035, 22.1-289.036, or 22.1-289.039, may apply in writing for a waiver from the Superintendent. The
2316 Superintendent may grant a waiver if the Superintendent determines that (i) the person is of good moral

2317 character and reputation and (ii) the waiver would not adversely affect the safety and well-being of
2318 children in the person's care. The Superintendent shall not grant a waiver to any person who has been
2319 convicted of any barrier crime as defined in § 19.2-392.02. However, the Superintendent may grant a
2320 waiver to a family day home licensed or registered by the Department if any other adult living in the home
2321 of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-
2322 57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, provided that
2323 (a) five years have elapsed following the conviction and (b) the Department has conducted a home study
2324 that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2)
2325 a determination that the offender is now a person of good moral character and reputation. The waiver shall
2326 not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been
2327 convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2, or any substantially similar
2328 offense under the laws of another jurisdiction. Any waiver granted under this section shall be available
2329 for inspection by the public. The child day program or family day system shall notify in writing every
2330 parent and guardian of the children in its care of any waiver granted for its operators, employees, or
2331 volunteers.

2332 B. The Board shall adopt regulations to implement the provisions of this section.

2333 **§ 22.1-289.039. Records check by unlicensed child day center; penalty.**

2334 Any child day center that is exempt from licensure pursuant to § 22.1-289.031 shall require all
2335 applicants for employment, employees, applicants to serve as volunteers, and volunteers and any other
2336 person who is expected to be alone with one or more children enrolled in the child day center to obtain a
2337 background check in accordance with § 22.1-289.035. A child day center that is exempt from licensure
2338 pursuant to § 22.1-289.031 shall refuse employment or service to any person who (i) has been convicted
2339 of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse
2340 or neglect within or outside the Commonwealth. The foregoing provisions shall not apply to a parent or
2341 guardian who may be left alone with his own child. For purposes of this section, convictions shall include
2342 prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that

would have been a felony if committed by an adult within or outside the Commonwealth. Further dissemination of the information provided to the facility is prohibited.

§ 22.1-289.040. Child day centers and family day homes receiving federal, state, or local child care funds; eligibility requirements.

A. Whenever any child day center or family day home that has not met the requirements of §§ 22.1-289.035, 22.1-289.036, and 22.1-289.039 applies to enter into a contract with the Department or its agents or designees to provide child care services to clients of the Department or its agents or designees, the Department or its agents or designees shall require a background check, at the time of application to enter into a contract and every five years thereafter, of (i) the applicant; any agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home pursuant to § 22.1-289.036; and (ii) all applicants for employment, employees, applicants to serve as volunteers, and volunteers pursuant to § 22.1-289.035. The child day center or family day home shall not be permitted to enter into a contract with the Department or its agents or designees for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Further dissemination of the information provided to the facility, beyond dissemination to the Department or its agents or designees is prohibited.

B. Every child day center or family day home that enters into a contract with the Department or its agents or designees to provide child care services to clients of the Department or its agents or designees that is funded, in whole or in part, by the Child Care and Development Block Grant, shall comply with all requirements established by federal law and regulations.

§ 22.1-289.041. Sex offender or child abuser prohibited from operating or residing in family day home; penalty.

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in, is employed by, or volunteers in the home, has been convicted of a felony in

2370 violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355,
2371 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1, or 18.2-374.1, has been convicted of any
2372 offense that requires registration on the Sex Offender and Crimes Against Minors Registry pursuant to §
2373 9.1-902, or is the subject of a founded complaint of child abuse or neglect within or outside the
2374 Commonwealth. A violation of this section is punishable as a Class 1 misdemeanor.

2375 Article 6.

2376 Complaints.

2377 **§ 22.1-289.042. Establishment of toll-free telephone line for complaints; investigation on**
2378 **receipt of complaints.**

2379 With such funds as are appropriated for this purpose, the Superintendent shall establish a toll-free
2380 telephone line to respond to complaints regarding operations of child day programs or family day systems.
2381 Upon receipt of a complaint concerning the operation of a child day program or family day system,
2382 regardless of whether the program is subject to licensure, the Superintendent shall, for good cause shown,
2383 cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services,
2384 records, and facilities. The child day program or family day system shall afford the Superintendent
2385 reasonable opportunity to inspect all of the operator's activities, services, records, and facilities and to
2386 interview its agents and employees and any child within its control. Whenever a child day program or
2387 family day system subject to inspection under this section is determined by the Superintendent to be in
2388 noncompliance with the provisions of this chapter or with regulations adopted pursuant to this chapter,
2389 the Superintendent shall give reasonable notice to the child day program or family day system of the nature
2390 of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to
2391 enjoin the operation of the child day program or family day system.

2392 **§ 22.1-289.043. Confidentiality of complainant's identity.**

2393 Whenever the Department conducts inspections and investigations in response to complaints
2394 received from the public, the identity of the complainant and the identity of any child who is the subject
2395 of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members
2396 of the public. Identities of the complainant and child who is the subject of the complaint shall be revealed

2397 only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion,
2398 from disclosing to the child day program or family day system the nature of the complaint or the identity
2399 of the child who is the subject of the complaint. Nothing contained herein shall prevent the Department
2400 or its employees from making reports under Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. If the
2401 Department intends to rely, in whole or in part, on any statements made by the complainant at any
2402 administrative hearing brought against child day program or family day system, the Department shall
2403 disclose the identity of the complainant to the child day program or family day system a reasonable time
2404 in advance of such hearing.

2405 **§ 22.1-289.044. Retaliation or discrimination against complainants.**

2406 No child day program or family day system shall retaliate or discriminate in any manner against
2407 any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the
2408 Department or any other agency of government or any person or entity operating under contract with an
2409 agency of government having responsibility for protecting the rights of children in child day programs
2410 and family day systems, (ii) attempts to assert any right protected by state or federal law, or (iii) assists
2411 any person in asserting such right.

2412 **§ 22.1-289.045. Retaliation against reports of child abuse or neglect.**

2413 No child day program or family day system shall retaliate in any manner against any person who
2414 in good faith reports child abuse or neglect pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

2415 Article 7.

2416 Regulations and Interdepartmental Cooperation.

2417 **§ 22.1-289.046. Regulations for child day programs and family day systems.**

2418 A. The Board shall adopt regulations for the activities, services, and facilities to be employed by
2419 persons and agencies required to be licensed under this chapter, which shall be designed to ensure that
2420 such activities, services, and facilities are conducive to the welfare of the children under the control of
2421 such persons or agencies.

2422 Such regulations shall be developed in consultation with representatives of the affected entities
2423 and shall include matters relating to the sex, age, and number of children and other persons to be

2424 maintained or cared for, as the case may be, and to the buildings and premises to be used, and reasonable
2425 standards for the activities, services and facilities to be employed. Such limitations and standards shall be
2426 specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific
2427 teaching approach or doctrine or require the membership, affiliation, or accreditation services of any single
2428 private accreditation or certification agency.

2429 Such regulations governing child day programs providing care for school-age children at a location
2430 that is currently approved by the Department or recognized as a private school by the Board for school
2431 occupancy and that houses a public or private school during the school year shall not (i) prohibit school-
2432 age children from using outdoor play equipment and areas approved for use by students of the school
2433 during school hours or (ii) in the case of public schools, require inspection or approval of the building,
2434 vehicles used to transport children attending the child day program that are owned by the school, or meals
2435 served to such children that are prepared by the school.

2436 Such regulations governing orientation and training of child day program staff shall provide that
2437 parents or other persons who participate in a cooperative preschool center on behalf of a child attending
2438 such cooperative preschool center, including such parents and persons who are counted for the purpose of
2439 determining staff-to-child ratios, shall be exempt from orientation and training requirements applicable to
2440 staff of child day programs; however, such regulations may require such parents and persons to complete
2441 up to four hours of training per year. This orientation and training exemption shall not apply to any parent
2442 or other person who participates in a cooperative preschool center that has entered into a contract to
2443 provide child care services funded by the Child Care and Development Block Grant.

2444 B. The Board shall adopt or amend regulations, policies, and procedures related to child day care
2445 in collaboration with the Virginia Recreation and Park Society. No regulation adopted by the Board shall
2446 prohibit a child day center from hiring an armed security officer, licensed pursuant to Article 4 (§ 9.1-138
2447 et seq.) of Chapter 1 of Title 9.1, to provide protection for children placed in the care of the child day
2448 center or employees of the center. The Board shall adopt or amend regulations related to therapeutic
2449 recreation programs in collaboration with the Virginia Park and Recreation Society and the Department
2450 of Behavioral Health and Developmental Services.

§ 22.1-289.047. Interagency agreements; cooperation of Department with other departments.

The Department is authorized to enter into interagency agreements with other state agencies to develop and implement regulations adopted pursuant to this chapter. Any state agency identified by the Department as appropriate to include in an interagency agreement shall participate in the development and implementation of the agreement. The Department shall assist and cooperate with other state departments in fulfilling their respective inspection responsibilities and in coordinating the regulations involving inspections. The Board may adopt regulations allowing the Department to so assist and cooperate with other state departments.

§ 22.1-289.048. Program leaders and child-care supervisors at licensed child day centers; approved credential.

Program leaders and child-care supervisors employed by child day centers may possess an approved credential. For purposes of this section:

"Approved credential" means a competency-based credential awarded to individuals who work with children ages five and under in either a teaching, supervisory, or administrative capacity and that is specifically awarded or administered by the National Association for the Education of Young Children; the National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; the National Accreditation Commission; the Virginia Community College System, or another institution of higher education; or its equivalent as determined by the Department.

"Program leader" or "child-care supervisor" means an individual designated to be responsible for the direct supervision of children and for the implementation of the activities and services for a group of children in a licensed child day center.

Article 8.

Facilities and Programs.

2478 **§ 22.1-289.049. Regulated child day programs to require proof of child identity and age;**
2479 **report to law-enforcement agencies.**

2480 A. Upon enrollment of a child in a regulated child day program, such child day program shall
2481 require information from the person enrolling the child regarding previous child day care and schools
2482 attended by the child. The regulated child day program shall also require that the person enrolling the child
2483 present the regulated child day program with the proof of the child's identity and age. The proof of identity,
2484 if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the
2485 requisite period of retention. The procedures for the disposal, physical destruction, or other disposition of
2486 the proof of identity containing social security numbers shall include all reasonable steps to destroy such
2487 documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those
2488 records to make them unreadable or indecipherable by any means.

2489 B. For purposes of this section:

2490 "Proof of identity" means a certified copy of a birth certificate or other reliable proof of the child's
2491 identity and age.

2492 "Regulated child day program" is one in which a person or organization has agreed to assume
2493 responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a
2494 24-hour period that is licensed pursuant to § 22.1-289.011, voluntarily registered pursuant to § 22.1-
2495 289.015, certified as a preschool or nursery school program pursuant to § 22.1-289.032, exempted from
2496 licensure as a child day center operated by a religious institution pursuant to § 22.1-289.031, or approved
2497 as a family day home by a licensed family day system.

2498 C. If the parent, guardian, or other person enrolling the child in a regulated child day program for
2499 longer than two consecutive days or other pattern of regular attendance does not provide the information
2500 required by subsection A within seven business days of initial attendance, such child day program shall
2501 immediately notify the local law-enforcement agency in its jurisdiction of such failure to provide the
2502 requested information.

2503 D. Upon receiving notification of such failure to provide the information required by subsection
2504 A, the law-enforcement agency shall, if available information warrants, immediately submit an inquiry to

2505 the Missing Children Information Clearinghouse and, with the assistance of the local department of social
2506 services, if available information warrants, conduct the appropriate investigation to determine whether the
2507 child is missing.

2508 E. The Board shall adopt regulations to implement the provisions of this section.

2509 **§ 22.1-289.050. Insurance notice requirements for family day homes; civil penalty.**

2510 A. Any person who operates a family day home approved by a licensed family day system, a
2511 licensed family day home, or a voluntarily registered family day home shall furnish a written notice to the
2512 parent or guardian of each child under the care of the family day home, which states whether there is
2513 liability insurance in force to cover the operation of the family day home, provided that no person under
2514 this section shall state that liability insurance is in place to cover the operation of the family day home,
2515 unless there is a minimum amount of coverage as established by the Department.

2516 B. Each parent or guardian shall acknowledge, in writing, receipt of such notice. In the event there
2517 is no longer insurance coverage, the person operating the family day home shall (i) notify each parent or
2518 guardian within 10 business days after the effective date of the change and (ii) obtain written
2519 acknowledgment of such notice. A copy of an acknowledgment required under this section shall be
2520 maintained on file at the family day home at all times while the child attends the family day home and for
2521 12 months after the child's last date of attendance.

2522 C. Any person who fails to give any notice required under this section shall be subject to a civil
2523 penalty of up to \$500 for each such failure.

2524 **§ 22.1-289.051. Dual licenses for certain child day centers.**

2525 Any facility licensed as a child day center which also meets the requirements for a license as a
2526 summer camp by the Department of Health under the provisions of § 35.1-18 shall be entitled to a summer
2527 camp license. Such a facility shall comply with all of the regulations adopted by the Board and the State
2528 Board of Health for each such license.

2529 **§ 22.1-289.052. Asbestos inspection required for child day centers.**

2530 The Superintendent shall not issue a license to any child day center that is located in a building
2531 built prior to 1978 until he receives a written statement that the building has been inspected for asbestos.

2532 as defined by § 2.2-1162, and in accordance with the regulations for initial asbestos inspections pursuant
2533 to the federal Asbestos Hazard Emergency Response Act, 40 C.F.R. Part 763 -- Asbestos Containing
2534 Materials in Schools. The inspection shall be conducted by personnel competent to identify the presence
2535 of asbestos and licensed in Virginia as an asbestos inspector and as an asbestos management planner
2536 pursuant to Chapter 5 (§ 54.1-500 et seq.) of Title 54.1. The written statement shall state whether (i) no
2537 asbestos was detected, (ii) asbestos was detected and response actions to abate any risk to human health
2538 have been completed, or (iii) asbestos was detected and response actions to abate any risk to human health
2539 have been recommended in accordance with a specified schedule and plan pursuant to applicable state and
2540 federal statutes and regulations. The statement shall include identification of any significant hazard areas,
2541 the date of the inspection and be signed by the person who inspected for the asbestos. If asbestos was
2542 detected, an operations and maintenance plan shall be developed in accordance with the regulations of the
2543 federal Asbestos Hazard Emergency Response Act and the statement shall be signed by the person who
2544 prepared the operations and maintenance plan. Any inspection, preparation of an operations and
2545 maintenance plan or response action shall be performed by competent personnel who have been licensed
2546 in accordance with the provisions of Chapter 5 of Title 54.1.

2547 When asbestos has been detected, the applicant for licensure shall also submit to the
2548 Superintendent a written statement that response actions to abate any risk to human health have been or
2549 will be initiated in accordance with a specified schedule and plan as recommended by an asbestos
2550 management planner licensed in Virginia. This statement shall be signed by the applicant for licensure.

2551 The written statements required by this section shall be submitted for approval to the
2552 Superintendent's representative prior to issuance of a license. The provisions of this section shall not apply
2553 to child day centers located in buildings required to be inspected pursuant to Article 5 (§ 2.2-1162 et seq.)
2554 of Chapter 11 of Title 2.2.

2555 **§ 22.1-289.053. Delay in acting on application or in notification.**

2556 In case the Superintendent fails to take final action upon an application for a license within 60 days
2557 after the application is made, either by way of issuance or refusal, or fails within such time to notify the
2558 applicant thereof, it shall be lawful for the applicant to engage in the operations or activities for which the

2559 license is desired, until the Superintendent has taken final action and notified the applicant thereof;
2560 however, no application shall be deemed made until all the required information is submitted in the form
2561 prescribed by the Superintendent.

2562 **§ 22.1-289.054. Visitation by parents or guardians in child day programs.**

2563 A custodial parent or guardian shall be admitted to any child day program. For purposes of this
2564 section, "child day program" is one in which a person or organization has agreed to assume responsibility
2565 for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period,
2566 regardless of whether it is licensed. Such right of admission shall apply only while the child is in the child
2567 day program.

2568 **§ 22.1-289.055. Public funds to be withheld for serious or persistent violations.**

2569 The Board may adopt policies, as permitted by state and federal law, to restrict the eligibility of a
2570 child day program or family day system to receive or continue to receive funds when such agency is found
2571 to be in serious or persistent violation of regulations.

2572 **§ 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records**
2573 **checks.**

2574 A. As a condition of employment, the governing boards or administrators of private elementary or
2575 secondary schools that are accredited pursuant to § 22.1-19 shall require any applicant who accepts
2576 employment, whether full-time or part-time, permanent or temporary, to submit to fingerprinting and to
2577 provide personal descriptive information to be forwarded along with the applicant's fingerprints through
2578 the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining
2579 criminal history record information regarding such applicant.

2580 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
2581 no record exists, shall report to the governing board or administrator, or to a private organization
2582 coordinating such records on behalf of such governing board or administrator pursuant to a written
2583 agreement with the Department of State Police, that the applicant meets the criteria or does not meet the
2584 criteria for employment based on whether or not the applicant has ever been convicted of any barrier crime
2585 as defined in § 19.2-392.02.

2586 B. The Central Criminal Records Exchange shall not disclose information to such governing board,
2587 administrator, or private organization coordinating such records regarding charges or convictions of any
2588 crimes. If any applicant is denied employment because of information appearing on the criminal history
2589 record and the applicant disputes the information upon which the denial was based, the Central Criminal
2590 Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the
2591 criminal history record from the Federal Bureau of Investigation. The information provided to the
2592 governing board, administrator, or private organization coordinating such records shall not be
2593 disseminated except as provided in this section. A governing board or administrator employing or
2594 previously employing a temporary teacher or a private organization coordinating such records on behalf
2595 of such governing board or administrator pursuant to a written agreement with the Department of State
2596 Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the
2597 criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or
2598 administrator of another accredited private elementary or secondary school in which such teacher has
2599 accepted employment. Such governing board, administrator, or private organization transferring criminal
2600 records information pursuant to this section shall be immune from civil liability for any official act,
2601 decision, or omission done or made in the performance of such transfer, when such acts or omissions are
2602 taken in good faith and are not the result of gross negligence or willful misconduct.

2603 Fees charged for the processing and administration of background checks pursuant to this section
2604 shall not exceed the actual cost to the state of such processing and administration.

2605 C. Effective July 1, 2017, the governing board or administrator of a private elementary or
2606 secondary school that is accredited pursuant to § 22.1-19 that operates a child-welfare agency day program
2607 or family day system regulated by the Department of Social Services pursuant to Chapter 17.14.1 (§ 63.2-
2608 1700 22.1-289.02 et seq.) of Title 63.2 shall accept evidence of a background check in accordance with §
2609 63.2-1720.1 22.1-289.035 for individuals who are required to undergo a background check in accordance
2610 with that section as a condition of employment in lieu of the background check required by subsection A.

2611 D. For purposes of this section, "governing board" or "administrator" means the unit or board or
2612 person designated to supervise operations of a system of private schools or a private school accredited
2613 pursuant to § 22.1-19.

2614 Nothing in this section or § 19.2-389 shall be construed to require any private or religious school
2615 which is not so accredited to comply with this section.

2616 **§ 22.1-299.4. Teach For America license.**

2617 A. Notwithstanding any provision of law to the contrary, the Board shall issue a two-year
2618 provisional license, hereafter referred to as the Teach For America license, to any participant in Teach For
2619 America, a nationwide nonprofit organization focused on closing the academic achievement gaps between
2620 students in high-income and low-income areas, who submits an application and meets the following
2621 criteria:

2622 1. Holds, at minimum, a baccalaureate degree from a regionally accredited institution of higher
2623 education;

2624 2. Has met the requirements prescribed by the Board for all endorsements sought or has met the
2625 qualifying scores on the content area assessment prescribed by the Board for the endorsements sought;

2626 3. Possesses good moral character according to criteria developed by the Board;

2627 4. Has been offered and has accepted placement in Teach For America;

2628 5. Has successfully completed pre-service training and is participating in the professional
2629 development requirements of Teach For America, including teaching frameworks, curricula, lesson
2630 planning, instructional delivery, classroom management, assessment and evaluation of student progress,
2631 classroom diversity, and literacy development;

2632 6. Has an offer of employment from a local school board to teach in a public elementary or
2633 secondary school in the Commonwealth or a preschool program that receives state funds pursuant to
2634 ~~subsection C of § 22.1-199.1~~ § 22.1-289.09; and

2635 7. Receives a recommendation from the employing school division for a Teach For America
2636 license in the endorsement area in which the individual seeks to be licensed.

2637 B. In addition to the criteria set forth in subsection A, any individual who seeks an endorsement in
2638 early childhood, early/primary, or elementary education shall either (i) agree to complete such coursework
2639 in the teaching of reading as may be prescribed by the Board pursuant to regulation during the first year
2640 of employment or (ii) achieve a passing score on a reading instructional assessment prescribed by the
2641 Board pursuant to regulation.

2642 C. Teachers issued a Teach For America provisional license shall not be eligible for continuing
2643 contract status while employed under the authority of a Teach For America license and shall be subject to
2644 the probationary terms of employment specified in § 22.1-303.

2645 D. The Board may extend any Teach For America license for one additional year upon request of
2646 the employing school division, provided that no Teach For America license shall exceed a total of three
2647 years in length.

2648 E. Notwithstanding any provision of law to the contrary, upon completion of at least two years of
2649 full-time teaching experience in a public elementary or secondary school in the Commonwealth or a
2650 preschool program that receives state funds pursuant to ~~subsection C of § 22.1-199.1~~ § 22.1-289.09, an
2651 individual holding a Teach For America license shall be eligible to receive a renewable license if he has
2652 (i) achieved satisfactory scores on all professional teacher assessments required by the Board and (ii)
2653 received satisfactory evaluations at the conclusion of each year of employment.

2654 F. Notwithstanding any provision of law to the contrary, the Board shall issue a Teach For America
2655 license to any individual who (i) has completed two years of successful teaching in the Teach For America
2656 program in another state, (ii) is not eligible to receive a renewable license, and (iii) meets the criteria set
2657 forth in subsection A.

2658 **§ 46.2-341.9. Eligibility for commercial driver's license or commercial learner's permit.**

2659 A. A Virginia commercial driver's license or commercial learner's permit shall be issued only to a
2660 person who drives or intends to drive a commercial motor vehicle, who is domiciled in the
2661 Commonwealth, and who is eligible for a commercial driver's license or commercial learner's permit under
2662 such terms and conditions as the Department may require.

2663 No person shall be eligible for a Virginia commercial driver's license or commercial learner's
2664 permit until he has applied for such license or permit and has passed the applicable vision, knowledge and
2665 skills tests required by this article, and has satisfied all other applicable licensing requirements imposed
2666 by the laws of the Commonwealth. Such requirements shall include meeting the standards contained in
2667 subparts F, G, and H, of Part 383 of the FMCSA regulations.

2668 No person shall be eligible for a Virginia commercial driver's license or commercial learner's
2669 permit during any period in which he is disqualified from driving a commercial motor vehicle, or his
2670 driver's license or privilege to drive is suspended, revoked or cancelled in any state, or during any period
2671 wherein the restoration of his license or privilege is contingent upon the furnishing of proof of financial
2672 responsibility.

2673 No person shall be eligible for a Virginia commercial driver's license until he surrenders all other
2674 driver's licenses issued to him by any state.

2675 No person shall be eligible for a Virginia commercial learner's permit until he surrenders all other
2676 driver's licenses and permits issued to him by any other state. The applicant for a commercial learner's
2677 permit is not required to surrender his Virginia noncommercial driver's license.

2678 No person under the age of 21 years shall be eligible for a commercial driver's license, except that
2679 a person who is at least 18 years of age may be issued a commercial driver's license or commercial learner's
2680 permit, provided that such person is exempt from or is not subject to the age requirements of the Federal
2681 Motor Carrier Safety Regulations contained in 49 C.F.R. Part 391, and is not prohibited from operating a
2682 commercial motor vehicle by the Virginia Motor Carrier Safety Regulations, and has so certified. No
2683 person under the age of 21 years shall be issued a hazardous materials endorsement.

2684 No person shall be eligible for a Virginia commercial driver's license to drive a Type S vehicle, as
2685 defined in subsection B of § 46.2-341.16, during any period in which he is a person for whom registration
2686 with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900
2687 et seq.) of Title 9.1.

2688 In determining the eligibility of any applicant for a Virginia commercial driver's license, the
2689 Department shall consider, to the extent not inconsistent with federal law, the applicant's military training
2690 and experience.

2691 A person for whom registration with the Sex Offender and Crimes Against Minors Registry is
2692 required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 may be issued a Virginia commercial driver's
2693 license to drive a Type P vehicle, as defined in subsection B of § 46.2-341.16, provided the commercial
2694 driver's license includes a restriction prohibiting the license holder from operating a commercial vehicle
2695 to transport children to or from activities sponsored by a school or by a child day care facility licensed,
2696 regulated, or approved by the ~~Virginia Department of Social Services~~ Education.

2697 B. Notwithstanding the provisions of subsection A, pursuant to 49 U.S.C. 31311(a)(12) a
2698 commercial driver's license or commercial learner's permit may be issued to an individual who (i) operates
2699 or will operate a commercial motor vehicle; (ii) is a member of the active duty military, military reserves,
2700 National Guard, active duty United States Coast Guard, or Coast Guard Auxiliary; and (iii) is not
2701 domiciled in the Commonwealth, but whose temporary or permanent duty station is located in the
2702 Commonwealth.

2703 **§ 46.2-341.10. Special provisions relating to commercial learner's permit.**

2704 A. The Department upon receiving an application on forms prescribed by the Commissioner and
2705 upon the applicant's satisfactory completion of the vision and knowledge tests required for the class and
2706 type of commercial motor vehicle to be driven by the applicant may, in its discretion, issue to such
2707 applicant a commercial learner's permit. Such permit shall be valid for no more than one year from the
2708 date of issuance. No renewals are permitted. A commercial learner's permit shall entitle the applicant to
2709 drive a commercial motor vehicle of the class and type designated on the permit, but only when
2710 accompanied by a person licensed to drive the class and type of commercial motor vehicle driven by the
2711 applicant. The person accompanying the permit holder shall occupy the seat closest to the driver's seat for
2712 the purpose of giving instruction to the permit holder in driving the commercial motor vehicle.

2713 B. No person shall be issued a commercial learner's permit unless he possesses a valid Virginia
2714 driver's license or has satisfied all the requirements necessary to obtain such a license.

2715 C. A commercial learner's permit holder with a passenger (P) endorsement (i) must have taken and
2716 passed the P endorsement knowledge test and (ii) is prohibited from operating a commercial motor vehicle
2717 carrying passengers, other than federal or state auditors and inspectors, test examiners, other trainees, and
2718 the commercial driver's license holder accompanying the commercial learner's permit holder. The P
2719 endorsement must be class specific.

2720 D. A commercial learner's permit holder with a school bus (S) endorsement (i) must have taken
2721 and passed the S endorsement knowledge test and (ii) is prohibited from operating a school bus with
2722 passengers other than federal or state auditors and inspectors, test examiners, other trainees, and the
2723 commercial driver's license holder accompanying the commercial learner's permit holder. No person shall
2724 be issued a commercial learner's permit to drive school buses or to drive any commercial vehicle to
2725 transport children to or from activities sponsored by a school or by a child day care facility licensed,
2726 regulated, or approved by the ~~Virginia Department of Social Services~~ Education during any period in
2727 which he is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is
2728 required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

2729 E. A commercial learner's permit holder with a tank vehicle (N) endorsement (i) must have taken
2730 and passed the N endorsement knowledge test and (ii) may only operate an empty tank vehicle and is
2731 prohibited from operating any tank vehicle that previously contained hazardous materials that has not been
2732 purged of any residue.

2733 F. The issuance of a commercial learner's permit is a precondition to the initial issuance of a
2734 commercial driver's license and to the upgrade of a commercial driver's license if the upgrade requires a
2735 skills test. The commercial learner's permit holder is not eligible to take the commercial driver's license
2736 skills test until he has held the permit for the required period of time specified in § 46.2-324.1.

2737 G. Any commercial learner's permit holder who operates a commercial motor vehicle without
2738 being accompanied by a licensed driver as provided in this section is guilty of a Class 2 misdemeanor.

2739 H. The Department shall charge a fee of \$3 for each commercial learner's permit issued under the
2740 provisions of this section.

§ 46.2-341.18:3. Cancellation of commercial driver's license endorsement for certain offenders.

The Commissioner shall cancel the Type S school bus endorsement for any person holding a commercial driver's license or commercial learner's permit who is convicted of an offense for which registration is required in the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

Any person holding a commercial driver's license or commercial learner's permit with a Type P passenger endorsement who is convicted of an offense for which registration is required in the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 shall surrender such license or permit to the Department, and shall be issued a license or permit that includes a restriction prohibiting the license or permit holder from operating a vehicle to transport children to or from activities sponsored by a school or by a child day care facility licensed, regulated, or approved by the Virginia Department of ~~Social Services~~ Education.

If the holder of a commercial driver's license or commercial learner's permit fails to surrender the license or permit as required under this section, the Department shall cancel the license or permit.

§ 51.1-617. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Trustees of the Virginia Retirement System.

"Eligible employee" means any turnaround specialist or member of the middle school teacher corps providing services for a participating public school division pursuant to subsections ~~F~~E and ~~G~~F of § 22.1-199.1.

"Participating employer" means any local public school board that offers and pays the costs of improved retirement benefits as described in subsections ~~F~~E and ~~G~~F of § 22.1-199.1.

"Plan" means the defined contribution plan established pursuant to this chapter and the provisions of § 401 (a) of the Internal Revenue Code of 1986, as amended.

"Qualified participant" means an eligible employee of a participating employer.

§ 54.1-3005. Specific powers and duties of Board.

2768 In addition to the general powers and duties conferred in this title, the Board shall have the
2769 following specific powers and duties:

2770 1. To prescribe minimum standards and approve curricula for educational programs preparing
2771 persons for licensure or certification under this chapter;

2772 2. To approve programs that meet the requirements of this chapter and of the Board;

2773 3. To provide consultation service for educational programs as requested;

2774 4. To provide for periodic surveys of educational programs;

2775 5. To deny or withdraw approval from educational or training programs for failure to meet
2776 prescribed standards;

2777 6. To provide consultation regarding nursing practice for institutions and agencies as requested
2778 and investigate illegal nursing practices;

2779 7. To keep a record of all its proceedings;

2780 8. To certify and maintain a registry of all certified nurse aides and to promulgate regulations
2781 consistent with federal law and regulation. The Board shall require all schools to demonstrate their
2782 compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in
2783 response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-
2784 2401 for any violation thereof. Such regulations may include standards for the authority of licensed
2785 practical nurses to teach nurse aides;

2786 9. To maintain a registry of clinical nurse specialists and to promulgate regulations governing
2787 clinical nurse specialists;

2788 10. To license and maintain a registry of all licensed massage therapists and to promulgate
2789 regulations governing the criteria for licensure as a massage therapist and the standards of professional
2790 conduct for licensed massage therapists;

2791 11. To promulgate regulations for the delegation of certain nursing tasks and procedures not
2792 involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by
2793 and under the supervision of a registered nurse, who retains responsibility and accountability for such
2794 delegation;

2795 12. To develop and revise as may be necessary, in coordination with the Boards of Medicine and
2796 Education, guidelines for the training of employees of a school board in the administration of insulin and
2797 glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment
2798 for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999,
2799 and shall be made available to local school boards for a fee not to exceed the costs of publication;

2800 13. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate
2801 regulations for its implementation;

2802 14. To collect, store and make available nursing workforce information regarding the various
2803 categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1;

2804 15. To expedite application processing, to the extent possible, pursuant to § 54.1-119 for an
2805 applicant for licensure or certification by the Board upon submission of evidence that the applicant, who
2806 is licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official
2807 military orders;

2808 16. To register medication aides and promulgate regulations governing the criteria for such
2809 registration and standards of conduct for medication aides;

2810 17. To approve training programs for medication aides to include requirements for instructional
2811 personnel, curriculum, continuing education, and a competency evaluation;

2812 18. To set guidelines for the collection of data by all approved nursing education programs and to
2813 compile this data in an annual report. The data shall include but not be limited to enrollment, graduation
2814 rate, attrition rate, and number of qualified applicants who are denied admission;

2815 19. To develop, in consultation with the Board of Pharmacy, guidelines for the training of
2816 employees of child day programs as defined in ~~§ 63.2-100~~ 22.1-289.02 and regulated by the ~~State Board~~
2817 ~~of Social Services~~ Education in the administration of prescription drugs as defined in the Drug Control
2818 Act (§ 54.1-3400 et seq.). Such training programs shall be taught by a registered nurse, licensed practical
2819 nurse, doctor of medicine or osteopathic medicine, or pharmacist;

2820 20. In order to protect the privacy and security of health professionals licensed, registered or
2821 certified under this chapter, to promulgate regulations permitting use on identification badges of first name

2822 and first letter only of last name and appropriate title when practicing in hospital emergency departments,
2823 in psychiatric and mental health units and programs, or in health care facility units offering treatment for
2824 patients in custody of state or local law-enforcement agencies;

2825 21. To revise, as may be necessary, guidelines for seizure management, in coordination with the
2826 Board of Medicine, including the list of rescue medications for students with epilepsy and other seizure
2827 disorders in the public schools. The revised guidelines shall be finalized and made available to the Board
2828 of Education by August 1, 2010. The guidelines shall then be posted on the Department of Education's
2829 website; and

2830 22. To promulgate, together with the Board of Medicine, regulations governing the licensure of
2831 nurse practitioners pursuant to § 54.1-2957.

2832 **§ 54.1-3408. Professional use by practitioners.**

2833 A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed
2834 nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or
2835 a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 shall only prescribe,
2836 dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within
2837 the course of his professional practice.

2838 B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral
2839 prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may
2840 cause drugs or devices to be administered by:

2841 1. A nurse, physician assistant, or intern under his direction and supervision;

2842 2. Persons trained to administer drugs and devices to patients in state-owned or state-operated
2843 hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the
2844 Department of Behavioral Health and Developmental Services who administer drugs under the control
2845 and supervision of the prescriber or a pharmacist;

2846 3. Emergency medical services personnel certified and authorized to administer drugs and devices
2847 pursuant to regulations of the Board of Health who act within the scope of such certification and pursuant
2848 to an oral or written order or standing protocol; or

2849 4. A licensed respiratory therapist as defined in § 54.1-2954 who administers by inhalation
2850 controlled substances used in inhalation or respiratory therapy.

2851 C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by
2852 state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may
2853 authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used
2854 in the diagnosis or treatment of disease.

2855 D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
2856 course of his professional practice, such prescriber may authorize registered nurses and licensed practical
2857 nurses to possess (i) epinephrine and oxygen for administration in treatment of emergency medical
2858 conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

2859 Pursuant to the regulations of the Board of Health, certain emergency medical services technicians
2860 may possess and administer epinephrine in emergency cases of anaphylactic shock.

2861 Pursuant to an order or standing protocol issued by the prescriber within the course of his
2862 professional practice, any school nurse, school board employee, employee of a local governing body, or
2863 employee of a local health department who is authorized by a prescriber and trained in the administration
2864 of epinephrine may possess and administer epinephrine.

2865 Pursuant to an order or a standing protocol issued by the prescriber within the course of his
2866 professional practice, any employee of a school for students with disabilities, as defined in § 22.1-319 and
2867 licensed by the Board of Education, or any employee of a private school that is accredited pursuant to §
2868 22.1-19 as administered by the Virginia Council for Private Education who is authorized by a prescriber
2869 and trained in the administration of epinephrine may possess and administer epinephrine.

2870 Pursuant to an order or a standing protocol issued by the prescriber within the course of his
2871 professional practice, any employee of a public institution of higher education or a private institution of
2872 higher education who is authorized by a prescriber and trained in the administration of epinephrine may
2873 possess and administer epinephrine.

2874 Pursuant to an order or a standing protocol issued by the prescriber within the course of his
2875 professional practice, any employee of an organization providing outdoor educational experiences or

2876 programs for youth who is authorized by a prescriber and trained in the administration of epinephrine may
2877 possess and administer epinephrine.

2878 Pursuant to an order issued by the prescriber within the course of his professional practice, an
2879 employee of a provider licensed by the Department of Behavioral Health and Developmental Services or
2880 a person providing services pursuant to a contract with a provider licensed by the Department of
2881 Behavioral Health and Developmental Services may possess and administer epinephrine, provided such
2882 person is authorized and trained in the administration of epinephrine.

2883 Pursuant to an oral or written order or standing protocol issued by the prescriber within the course
2884 of his professional practice, such prescriber may authorize pharmacists to possess epinephrine and oxygen
2885 for administration in treatment of emergency medical conditions.

2886 E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
2887 course of his professional practice, such prescriber may authorize licensed physical therapists to possess
2888 and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

2889 F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
2890 course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and
2891 administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs; oxygen for use in
2892 emergency situations; and epinephrine for use in emergency cases of anaphylactic shock.

2893 G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
2894 course of his professional practice, and in accordance with policies and guidelines established by the
2895 Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or licensed
2896 practical nurses under the supervision of a registered nurse to possess and administer tuberculin purified
2897 protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines
2898 shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention
2899 for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any
2900 subsequently implemented standards of the Occupational Safety and Health Administration and the
2901 Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's
2902 policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to

2903 whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of
2904 those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing
2905 protocols has received adequate training in the practice and principles underlying tuberculin screening.

2906 The Health Commissioner or his designee may authorize registered nurses, acting as agents of the
2907 Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein
2908 derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and
2909 policies established by the Department of Health.

2910 H. Pursuant to a written order or standing protocol issued by the prescriber within the course of
2911 his professional practice, such prescriber may authorize, with the consent of the parents as defined in §
2912 22.1-1, an employee of (i) a school board, (ii) a school for students with disabilities as defined in § 22.1-
2913 319 licensed by the Board of Education, or (iii) a private school accredited pursuant to § 22.1-19 as
2914 administered by the Virginia Council for Private Education who is trained in the administration of insulin
2915 and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as
2916 having diabetes and who requires insulin injections during the school day or for whom glucagon has been
2917 prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when
2918 a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the
2919 administration of the medication.

2920 Pursuant to a written order or standing protocol issued by the prescriber within the course of his
2921 professional practice, such prescriber may authorize an employee of a public institution of higher
2922 education or a private institution of higher education who is trained in the administration of insulin and
2923 glucagon to assist with the administration of insulin or administration of glucagon to a student diagnosed
2924 as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the
2925 emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse,
2926 nurse practitioner, physician, or physician assistant is not present to perform the administration of the
2927 medication.

2928 Pursuant to a written order issued by the prescriber within the course of his professional practice,
2929 such prescriber may authorize an employee of a provider licensed by the Department of Behavioral Health

2930 and Developmental Services or a person providing services pursuant to a contract with a provider licensed
2931 by the Department of Behavioral Health and Developmental Services to assist with the administration of
2932 insulin or to administer glucagon to a person diagnosed as having diabetes and who requires insulin
2933 injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia,
2934 provided such employee or person providing services has been trained in the administration of insulin and
2935 glucagon.

2936 I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the
2937 administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is
2938 not physically present, by (i) licensed pharmacists, (ii) registered nurses, or (iii) licensed practical nurses
2939 under the supervision of a registered nurse. A prescriber acting on behalf of and in accordance with
2940 established protocols of the Department of Health may authorize the administration of vaccines to any
2941 person by a pharmacist, nurse, or designated emergency medical services provider who holds an advanced
2942 life support certificate issued by the Commissioner of Health under the direction of an operational medical
2943 director when the prescriber is not physically present. The emergency medical services provider shall
2944 provide documentation of the vaccines to be recorded in the Virginia Immunization Information System.

2945 J. A dentist may cause Schedule VI topical drugs to be administered under his direction and
2946 supervision by either a dental hygienist or by an authorized agent of the dentist.

2947 Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist
2948 in the course of his professional practice, a dentist may authorize a dental hygienist under his general
2949 supervision, as defined in § 54.1-2722, or his remote supervision, as defined in subsection E or F of §
2950 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly
2951 applied antimicrobial agents for treatment of periodontal pocket lesions, and any other Schedule VI topical
2952 drug approved by the Board of Dentistry.

2953 In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule
2954 VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI
2955 local anesthesia.

2956 K. Pursuant to an oral or written order or standing protocol issued by the prescriber within the
2957 course of his professional practice, such prescriber may authorize registered professional nurses certified
2958 as sexual assault nurse examiners-A (SANE-A) under his supervision and when he is not physically
2959 present to possess and administer preventive medications for victims of sexual assault as recommended
2960 by the Centers for Disease Control and Prevention.

2961 L. This section shall not prevent the administration of drugs by a person who has satisfactorily
2962 completed a training program for this purpose approved by the Board of Nursing and who administers
2963 such drugs in accordance with a prescriber's instructions pertaining to dosage, frequency, and manner of
2964 administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to
2965 security and record keeping, when the drugs administered would be normally self-administered by (i) an
2966 individual receiving services in a program licensed by the Department of Behavioral Health and
2967 Developmental Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision
2968 Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the
2969 placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program
2970 participant of an adult day-care center licensed by the Department of Social Services; (v) a resident of any
2971 facility authorized or operated by a state or local government whose primary purpose is not to provide
2972 health care services; (vi) a resident of a private children's residential facility, as defined in § 63.2-100 and
2973 licensed by the Department of Social Services, Department of Education, or Department of Behavioral
2974 Health and Developmental Services; or (vii) a student in a school for students with disabilities, as defined
2975 in § 22.1-319 and licensed by the Board of Education.

2976 In addition, this section shall not prevent a person who has successfully completed a training
2977 program for the administration of drugs via percutaneous gastrostomy tube approved by the Board of
2978 Nursing and been evaluated by a registered nurse as having demonstrated competency in administration
2979 of drugs via percutaneous gastrostomy tube from administering drugs to a person receiving services from
2980 a program licensed by the Department of Behavioral Health and Developmental Services to such person
2981 via percutaneous gastrostomy tube. The continued competency of a person to administer drugs via
2982 percutaneous gastrostomy tube shall be evaluated semiannually by a registered nurse.

2983 M. Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.)
2984 of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted
2985 living facility licensed by the Department of Social Services. A registered medication aide shall administer
2986 drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage,
2987 frequency, and manner of administration; in accordance with regulations promulgated by the Board of
2988 Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's
2989 Medication Management Plan; and in accordance with such other regulations governing their practice
2990 promulgated by the Board of Nursing.

2991 N. In addition, this section shall not prevent the administration of drugs by a person who
2992 administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and
2993 manner of administration and with written authorization of a parent, and in accordance with school board
2994 regulations relating to training, security and record keeping, when the drugs administered would be
2995 normally self-administered by a student of a Virginia public school. Training for such persons shall be
2996 accomplished through a program approved by the local school boards, in consultation with the local
2997 departments of health.

2998 O. In addition, this section shall not prevent the administration of drugs by a person to (i) a child
2999 in a child day program as defined in ~~§ 63.2-100~~ 22.1-289.02 and regulated by the ~~State Board of Social~~
3000 ~~Services~~ Education or a local government pursuant to § 15.2-914, or (ii) a student of a private school that
3001 is accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education, provided
3002 such person (a) has satisfactorily completed a training program for this purpose approved by the Board of
3003 Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant,
3004 doctor of medicine or osteopathic medicine, or pharmacist; (b) has obtained written authorization from a
3005 parent or guardian; (c) administers drugs only to the child identified on the prescription label in accordance
3006 with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (d)
3007 administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled
3008 container that would normally be self-administered by the child or student, or administered by a parent or
3009 guardian to the child or student.

3010 P. In addition, this section shall not prevent the administration or dispensing of drugs and devices
3011 by persons if they are authorized by the State Health Commissioner in accordance with protocols
3012 established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared
3013 a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued
3014 a declaration of an actual or potential bioterrorism incident or other actual or potential public health
3015 emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons
3016 have received the training necessary to safely administer or dispense the needed drugs or devices. Such
3017 persons shall administer or dispense all drugs or devices under the direction, control, and supervision of
3018 the State Health Commissioner.

3019 Q. Nothing in this title shall prohibit the administration of normally self-administered drugs by
3020 unlicensed individuals to a person in his private residence.

3021 R. This section shall not interfere with any prescriber issuing prescriptions in compliance with his
3022 authority and scope of practice and the provisions of this section to a Board agent for use pursuant to
3023 subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid
3024 prescriptions.

3025 S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient
3026 care technicians who are certified by an organization approved by the Board of Health Professions or
3027 persons authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.), in the
3028 ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin,
3029 topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for
3030 the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under
3031 the orders of a licensed physician, nurse practitioner, or physician assistant and under the immediate and
3032 direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a
3033 patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the
3034 clinical skills instruction segment of a supervised dialysis technician training program, provided such
3035 trainee is identified as a "trainee" while working in a renal dialysis facility.

3036 The dialysis care technician or dialysis patient care technician administering the medications shall
3037 have demonstrated competency as evidenced by holding current valid certification from an organization
3038 approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.).

3039 T. Persons who are otherwise authorized to administer controlled substances in hospitals shall be
3040 authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

3041 U. Pursuant to a specific order for a patient and under his direct and immediate supervision, a
3042 prescriber may authorize the administration of controlled substances by personnel who have been properly
3043 trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include
3044 intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such
3045 administration.

3046 V. A physician assistant, nurse, or dental hygienist may possess and administer topical fluoride
3047 varnish pursuant to an oral or written order or a standing protocol issued by a doctor of medicine,
3048 osteopathic medicine, or dentistry.

3049 W. A prescriber, acting in accordance with guidelines developed pursuant to § 32.1-46.02, may
3050 authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse,
3051 licensed practical nurse under the direction and immediate supervision of a registered nurse, or emergency
3052 medical services provider who holds an advanced life support certificate issued by the Commissioner of
3053 Health when the prescriber is not physically present.

3054 X. Notwithstanding the provisions of § 54.1-3303, pursuant to an oral, written, or standing order
3055 issued by a prescriber or a standing order issued by the Commissioner of Health or his designee
3056 authorizing the dispensing of naloxone or other opioid antagonist used for overdose reversal in the absence
3057 of an oral or written order for a specific patient issued by a prescriber, and in accordance with protocols
3058 developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of
3059 Health, a pharmacist, a health care provider providing services in a hospital emergency department, and
3060 emergency medical services personnel, as that term is defined in § 32.1-111.1, may dispense naloxone or
3061 other opioid antagonist used for overdose reversal and a person to whom naloxone or other opioid
3062 antagonist has been dispensed pursuant to this subsection may possess and administer naloxone or other

3063 opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to
3064 experience a life-threatening opioid overdose. Law-enforcement officers as defined in § 9.1-101,
3065 employees of the Department of Forensic Science, employees of the Office of the Chief Medical
3066 Examiner, employees of the Department of General Services Division of Consolidated Laboratory
3067 Services, employees of the Department of Corrections designated as probation and parole officers or as
3068 correctional officers as defined in § 53.1-1, employees of regional jails, school nurses, local health
3069 department employees that are assigned to a public school pursuant to an agreement between the local
3070 health department and the school board, other school board employees or individuals contracted by a
3071 school board to provide school health services, and firefighters who have completed a training program
3072 may also possess and administer naloxone or other opioid antagonist used for overdose reversal and may
3073 dispense naloxone or other opioid antagonist used for overdose reversal pursuant to an oral, written, or
3074 standing order issued by a prescriber or a standing order issued by the Commissioner of Health or his
3075 designee in accordance with protocols developed by the Board of Pharmacy in consultation with the Board
3076 of Medicine and the Department of Health.

3077 Y. Notwithstanding any other law or regulation to the contrary, a person who is acting on behalf
3078 of an organization that provides services to individuals at risk of experiencing an opioid overdose or
3079 training in the administration of naloxone for overdose reversal may dispense naloxone to a person who
3080 has received instruction on the administration of naloxone for opioid overdose reversal, provided that such
3081 dispensing is (i) pursuant to a standing order issued by a prescriber and (ii) in accordance with protocols
3082 developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of
3083 Health. If the person acting on behalf of an organization dispenses naloxone in an injectable formulation
3084 with a hypodermic needle or syringe, he shall first obtain authorization from the Department of Behavioral
3085 Health and Developmental Services to train individuals on the proper administration of naloxone by and
3086 proper disposal of a hypodermic needle or syringe, and he shall obtain a controlled substance registration
3087 from the Board of Pharmacy. The Board of Pharmacy shall not charge a fee for the issuance of such
3088 controlled substance registration. The dispensing may occur at a site other than that of the controlled
3089 substance registration provided the entity possessing the controlled substances registration maintains

3090 records in accordance with regulations of the Board of Pharmacy. No person who dispenses naloxone on
3091 behalf of an organization pursuant to this subsection shall charge a fee for the dispensing of naloxone that
3092 is greater than the cost to the organization of obtaining the naloxone dispensed. A person to whom
3093 naloxone has been dispensed pursuant to this subsection may possess naloxone and may administer
3094 naloxone to a person who is believed to be experiencing or about to experience a life-threatening opioid
3095 overdose.

3096 Z. Pursuant to a written order or standing protocol issued by the prescriber within the course of his
3097 professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-
3098 1, an employee of (i) a school board, (ii) a school for students with disabilities as defined in § 22.1-319
3099 licensed by the Board of Education, or (iii) a private school accredited pursuant to § 22.1-19 as
3100 administered by the Virginia Council for Private Education who is trained in the administration of injected
3101 medications for the treatment of adrenal crisis resulting from a condition causing adrenal insufficiency to
3102 administer such medication to a student diagnosed with a condition causing adrenal insufficiency when
3103 the student is believed to be experiencing or about to experience an adrenal crisis. Such authorization shall
3104 be effective only when a licensed nurse, nurse practitioner, physician, or physician assistant is not present
3105 to perform the administration of the medication.

3106 **§ 58.1-439.4. Day-care facility investment tax credit.**

3107 A. For taxable years beginning on and after January 1, 1997, any taxpayer shall be allowed a credit
3108 against the taxes imposed by § 58.1-320 or § 58.1-400 in an amount equal to ~~twenty-five~~ 25 percent of all
3109 expenditures paid or incurred by such taxpayer in such taxable year for planning, site preparation,
3110 construction, renovation, or acquisition of facilities for the purpose of establishing a child day-care facility
3111 to be used primarily by the children of such taxpayer's employees, and equipment installed for permanent
3112 use within or immediately adjacent to such facility, including kitchen appliances, to the extent that such
3113 equipment or appliances are necessary in the use of such facility for purposes of child day-care; however,
3114 the amount of credit allowed to any taxpayer under this section shall not exceed \$25,000. If two or more
3115 taxpayers share in the cost of establishing the child day-care facility for the children of their employees,

3116 each such taxpayer shall be allowed such credit in relation to the respective share paid or incurred by such
3117 taxpayer, of the total expenditures for the facility in such taxable year.

3118 B. The credits provided under this section shall be allowed only if (i) the child day-care facility
3119 shall be operated under the authority of a license issued by the ~~Commissioner of Social Services~~
3120 Superintendent of Public Instruction pursuant to ~~§ 63.2-1701~~ 22.1-289.011, (ii) an application for a
3121 building permit for the facility is made after July 1, 1996, and (iii) the Tax Commissioner approves a
3122 taxpayer's application for a credit. Proper applications submitted to the Department for the credit shall be
3123 approved in the order received. For each application approved for credit it shall be assumed that the
3124 amount of the credit will be \$25,000, and the amount of the credit will be taken in the fiscal year in which
3125 the application is approved and the following two fiscal years. Approval of applications shall be limited
3126 to those that are assumed to result in no more than \$100,000 of credits in any fiscal year based on the
3127 assumptions set forth in this subsection.

3128 C. Any tax credit not usable for the taxable year may be carried over to the extent usable for the
3129 next three taxable years; however, the balance of a credit shall not be claimed for any succeeding taxable
3130 year in which the child day-care facility is operated for purposes of child day-care for less than six months.

3131 D. For purposes of this section, the amount of any credit attributable to a partnership, electing
3132 small business corporation (S corporation), or limited liability company shall be allocated to the individual
3133 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such
3134 business entities.

3135 **§ 63.2-100. Definitions.**

3136 As used in this title, unless the context requires a different meaning:

3137 "Abused or neglected child" means any child less than 18 years of age:

3138 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or
3139 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than
3140 accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental
3141 functions, including, but not limited to, a child who is with his parent or other person responsible for his
3142 care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance,

3143 or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his
3144 care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony
3145 violation of § 18.2-248;

3146 2. Whose parents or other person responsible for his care neglects or refuses to provide care
3147 necessary for his health. However, no child who in good faith is under treatment solely by spiritual means
3148 through prayer in accordance with the tenets and practices of a recognized church or religious
3149 denomination shall for that reason alone be considered to be an abused or neglected child. Further, a
3150 decision by parents who have legal authority for the child or, in the absence of parents with legal authority
3151 for the child, any person with legal authority for the child, who refuses a particular medical treatment for
3152 a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such
3153 decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has
3154 reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical
3155 treatment; (iii) the parents or other person with legal authority and the child have considered alternative
3156 treatment options; and (iv) the parents or other person with legal authority and the child believe in good
3157 faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit
3158 the provisions of § 16.1-278.4;

3159 3. Whose parents or other person responsible for his care abandons such child;

3160 4. Whose parents or other person responsible for his care commits or allows to be committed any
3161 act of sexual exploitation or any sexual act upon a child in violation of the law;

3162 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental
3163 or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco
3164 parentis;

3165 6. Whose parents or other person responsible for his care creates a substantial risk of physical or
3166 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
3167 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the
3168 parent or other person responsible for his care knows has been convicted of an offense against a minor for
3169 which registration is required as a violent sexual offender pursuant to § 9.1-902; or

3170 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined
3171 in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims
3172 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

3173 If a civil proceeding under this title is based solely on the parent having left the child at a hospital
3174 or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered
3175 the child to a hospital that provides 24-hour emergency services or to an attended emergency medical
3176 services agency that employs emergency medical services providers, within 14 days of the child's birth.
3177 For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court
3178 may find such a child is a neglected child upon the ground of abandonment.

3179 "Adoptive home" means any family home selected and approved by a parent, local board or a
3180 licensed child-placing agency for the placement of a child with the intent of adoption.

3181 "Adoptive placement" means arranging for the care of a child who is in the custody of a child-
3182 placing agency in an approved home for the purpose of adoption.

3183 "Adult abuse" means the willful infliction of physical pain, injury or mental anguish or
3184 unreasonable confinement of an adult as defined in § 63.2-1603.

3185 "Adult day care center" means any facility that is either operated for profit or that desires licensure
3186 and that provides supplementary care and protection during only a part of the day to four or more aged,
3187 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the
3188 State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the
3189 home or residence of an individual who cares for only persons related to him by blood or marriage.
3190 Included in this definition are any two or more places, establishments or institutions owned, operated or
3191 controlled by a single entity and providing such supplementary care and protection to a combined total of
3192 four or more aged, infirm or disabled adults.

3193 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as
3194 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,
3195 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the
3196 adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult

3197 exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an
3198 intentional failure to use the financial resources of an adult in a manner that results in neglect of such
3199 adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the
3200 use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or
3201 services or perform services against his will for another's profit, benefit, or advantage if the adult did not
3202 agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform
3203 such services.

3204 "Adult foster care" means room and board, supervision, and special services to an adult who has a
3205 physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

3206 "Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances
3207 that he is not able to provide for himself or is not being provided services necessary to maintain his
3208 physical and mental health and that the failure to receive such necessary services impairs or threatens to
3209 impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult
3210 is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care,
3211 provided that such treatment or care is performed in good faith and in accordance with the religious
3212 practices of the adult and there is a written or oral expression of consent by that adult.

3213 "Adult protective services" means services provided by the local department that are necessary to
3214 protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

3215 "Assisted living care" means a level of service provided by an assisted living facility for adults
3216 who may have physical or mental impairments and require at least a moderate level of assistance with
3217 activities of daily living.

3218 "Assisted living facility" means any congregate residential setting that provides or coordinates
3219 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
3220 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in
3221 a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of
3222 Health or the Department of Behavioral Health and Developmental Services, but including any portion of
3223 such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only

3224 persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled
3225 persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped
3226 pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility
3227 under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv)
3228 any housing project for persons 62 years of age or older or the disabled that provides no more than basic
3229 coordination of care services and is funded by the U.S. Department of Housing and Urban Development,
3230 by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in
3231 this definition are any two or more places, establishments or institutions owned or operated by a single
3232 entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled
3233 adults. Maintenance or care means the protection, general supervision and oversight of the physical and
3234 mental well-being of an aged, infirm or disabled individual.

3235 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who
3236 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive
3237 these benefits except for excess income.

3238 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

3239 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means
3240 parent(s) by previous adoption.

3241 "Board" means the State Board of Social Services.

3242 "Child" means any natural person under 18 years of age.

3243 ~~"Child day center" means a child day program offered to (i) two or more children under the age of~~
3244 ~~13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more~~
3245 ~~children at any location.~~

3246 ~~"Child day program" means a regularly operating service arrangement for children where, during~~
3247 ~~the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the~~
3248 ~~supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.~~

3249 "Child-placing agency" means (i) any person who places children in foster homes, adoptive homes
3250 or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster

3251 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists
3252 parents with the process of delegating parental and legal custodial powers of their children pursuant to
3253 Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom
3254 such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title
3255 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their
3256 authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

3257 "Child-protective services" means the identification, receipt and immediate response to complaints
3258 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment,
3259 and arranging for and providing necessary protective and rehabilitative services for a child and his family
3260 when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

3261 "Child support services" means any civil, criminal or administrative action taken by the Division
3262 of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
3263 collect child support, or child and spousal support.

3264 "Child-welfare agency" means a ~~child day center~~, child-placing agency, children's residential
3265 facility, ~~family day home, family day system~~, or independent foster home.

3266 "Children's residential facility" means any facility, child-caring institution, or group home that is
3267 maintained for the purpose of receiving children separated from their parents or guardians for full-time
3268 care, maintenance, protection and guidance, or for the purpose of providing independent living services
3269 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.
3270 Children's residential facility shall not include:

- 3271 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,
3272 return annually to the homes of their parents or guardians for not less than two months of summer vacation;
3273 2. An establishment required to be licensed as a summer camp by § 35.1-18; and
3274 3. A licensed or accredited hospital legally maintained as such.

3275 "Commissioner" means the Commissioner of the Department, his designee or authorized
3276 representative.

3277 "Department" means the State Department of Social Services.

3278 "Department of Health and Human Services" means the Department of Health and Human
3279 Services of the United States government or any department or agency thereof that may hereafter be
3280 designated as the agency to administer the Social Security Act, as amended.

3281 "Disposable income" means that part of the income due and payable of any individual remaining
3282 after the deduction of any amount required by law to be withheld.

3283 "Energy assistance" means benefits to assist low-income households with their home heating and
3284 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,
3285 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or
3286 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance
3287 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
3288 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

3289 "Family and permanency team" means the group of individuals assembled by the local department
3290 to assist with determining planning and placement options for a child, which shall include, as appropriate,
3291 all biological relatives and fictive kin of the child, as well as any professionals who have served as a
3292 resource to the child or his family, such as teachers, medical or mental health providers, and clergy
3293 members. In the case of a child who is 14 years of age or older, the family and permanency team shall
3294 also include any members of the child's case planning team that were selected by the child in accordance
3295 with subsection A of § 16.1-281.

3296 ~~"Family day home" means a child day program offered in the residence of the provider or the home~~
3297 ~~of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's~~
3298 ~~own children and any children who reside in the home, when at least one child receives care for~~
3299 ~~compensation. The provider of a licensed or registered family day home shall disclose to the parents or~~
3300 ~~guardians of children in their care the percentage of time per week that persons other than the provider~~
3301 ~~will care for the children. Family day homes serving five through 12 children, exclusive of the provider's~~
3302 ~~own children and any children who reside in the home, shall be licensed. However, no family day home~~
3303 ~~shall care for more than four children under the age of two, including the provider's own children and any~~
3304 ~~children who reside in the home, unless the family day home is licensed or voluntarily registered.~~

3305 However, a family day home where the children in care are all related to the provider by blood or marriage
3306 shall not be required to be licensed.

3307 "Family day system" means any person who approves family day homes as members of its system;
3308 who refers children to available family day homes in that system; and who, through contractual
3309 arrangement, may provide central administrative functions including, but not limited to, training of
3310 operators of member homes; technical assistance and consultation to operators of member homes;
3311 inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available
3312 health and social services.

3313 "Fictive kin" means persons who are not related to a child by blood or adoption but have an
3314 established relationship with the child or his family.

3315 "Foster care placement" means placement of a child through (i) an agreement between the parents
3316 or guardians and the local board where legal custody remains with the parents or guardians or (ii) an
3317 entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care
3318 placement" does not include placement of a child in accordance with a power of attorney pursuant to
3319 Chapter 10 (§ 20-166 et seq.) of Title 20.

3320 "Foster home" means a residence licensed by a child-placing agency or local board in which any
3321 child, other than a child by birth or adoption of such person or a child who is the subject of a power of
3322 attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural
3323 person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et seq.) of
3324 Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours without
3325 compensation, resides as a member of the household.

3326 "General relief" means money payments and other forms of relief made to those persons mentioned
3327 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-
3328 401.

3329 "Independent foster home" means a private family home in which any child, other than a child by
3330 birth or adoption of such person, resides as a member of the household and has been placed therein
3331 independently of a child-placing agency except (i) a home in which are received only children related by

3332 birth or adoption of the person who maintains such home and children of personal friends of such person;
3333 (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of
3334 § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which
3335 are received only children who are the subject of a properly executed power of attorney pursuant to
3336 Chapter 10 (§ 20-166 et seq.) of Title 20.

3337 "Independent living" means a planned program of services designed to assist a child age 16 and
3338 over and persons who are former foster care children or were formerly committed to the Department of
3339 Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

3340 "Independent living arrangement" means placement of (i) a child at least 16 years of age who is in
3341 the custody of a local board or licensed child-placing agency by the local board or licensed child-placing
3342 agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed
3343 to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile
3344 Justice, in a living arrangement in which such child or person does not have daily substitute parental
3345 supervision.

3346 "Independent living services" means services and activities provided to a child in foster care 14
3347 years of age or older who was committed or entrusted to a local board of social services, child welfare
3348 agency, or private child-placing agency. "Independent living services" may also mean services and
3349 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the
3350 age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to
3351 the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child
3352 at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department
3353 of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services
3354 shall include counseling, education, housing, employment, and money management skills development,
3355 access to essential documents, and other appropriate services to help children or persons prepare for self-
3356 sufficiency.

3357 "Independent physician" means a physician who is chosen by the resident of the assisted living
3358 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner,
3359 officer, or employee or as an independent contractor with the residence.

3360 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or
3361 foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
3362 entity authorized to make such placements in accordance with the laws of the foreign country under which
3363 it operates.

3364 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster
3365 care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out
3366 of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or
3367 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the
3368 action of any court.

3369 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

3370 "Kinship guardian" means the adult relative of a child in a kinship guardianship established in
3371 accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the
3372 child's foster parent.

3373 "Kinship guardianship" means a relationship established in accordance with § 63.2-1305 between
3374 a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended
3375 to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the
3376 child of the authority necessary to ensure the protection, education, care and control, and custody of the
3377 child and the authority for decision making for the child.

3378 "Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673
3379 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-
3380 1305, payments to eligible individuals who have received custody of a relative child of whom they had
3381 been the foster parents.

3382 "Local board" means the local board of social services representing one or more counties or cities.

3383 "Local department" means the local department of social services of any county or city in this
3384 Commonwealth.

3385 "Local director" means the director or his designated representative of the local department of the
3386 city or county.

3387 "Merit system plan" means those regulations adopted by the Board in the development and
3388 operation of a system of personnel administration meeting requirements of the federal Office of Personnel
3389 Management.

3390 "Parental placement" means locating or effecting the placement of a child or the placing of a child
3391 in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

3392 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to
3393 the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services;
3394 child care; and general relief.

3395 "Qualified assessor" means an entity contracting with the Department of Medical Assistance
3396 Services to perform nursing facility pre-admission screening or to complete the uniform assessment
3397 instrument for a home and community-based waiver program, including an independent physician
3398 contracting with the Department of Medical Assistance Services to complete the uniform assessment
3399 instrument for residents of assisted living facilities, or any hospital that has contracted with the Department
3400 of Medical Assistance Services to perform nursing facility pre-admission screenings.

3401 "Qualified individual" means a trained professional or licensed clinician who is not an employee
3402 of the local board of social services or licensed child-placing agency that placed the child in a qualified
3403 residential treatment program and is not affiliated with any placement setting in which children are placed
3404 by such local board of social services or licensed child-placing agency.

3405 "Qualified residential treatment program" means a program that (i) provides 24-hour residential
3406 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that
3407 meets the clinical and other needs of children with serious emotional or behavioral disorders, including
3408 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this
3409 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site

3410 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts
3411 outreach with the child's family members, including efforts to maintain connections between the child and
3412 his siblings and other family; documents and maintains records of such outreach efforts; and maintains
3413 contact information for any known biological family and fictive kin of the child; (v) whenever appropriate
3414 and in the best interest of the child, facilitates participation by family members in the child's treatment
3415 program before and after discharge and documents the manner in which such participation is facilitated;
3416 (vi) provides discharge planning and family-based aftercare support for at least six months after discharge;
3417 (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by
3418 the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the
3419 program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses
3420 the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional
3421 assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the
3422 child can be met through placement with a family member or in a foster home or, if not, in a placement
3423 setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that
3424 would provide the most effective and appropriate level of care for the child in the least restrictive
3425 environment and be consistent with the short-term and long-term goals established for the child in his
3426 foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral
3427 health goals for the child; and (d) is documented in a written report to be filed with the court prior to any
3428 hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

3429 ~~"Registered family day home" means any family day home that has met the standards for voluntary~~
3430 ~~registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate~~
3431 ~~of registration from the Commissioner.~~

3432 "Residential living care" means a level of service provided by an assisted living facility for adults
3433 who may have physical or mental impairments and require only minimal assistance with the activities of
3434 daily living. The definition of "residential living care" includes the services provided by independent
3435 living facilities that voluntarily become licensed.

3436 "Sibling" means each of two or more children having one or more parents in common.

3437 "Social services" means foster care, adoption, adoption assistance, child-protective services,
3438 domestic violence services, or any other services program implemented in accordance with regulations
3439 adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et
3440 seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter
3441 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under
3442 the supervision of the Commissioner for Aging and Rehabilitative Services.

3443 "Special order" means an order imposing an administrative sanction issued to any party licensed
3444 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special
3445 order shall be considered a case decision as defined in § 2.2-4001.

3446 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the
3447 Department through which a relative can receive monthly cash assistance for the support of his eligible
3448 children.

3449 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the
3450 Temporary Assistance for Needy Families program for families in which both natural or adoptive parents
3451 of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work
3452 (VIEW) participation under § 63.2-609.

3453 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social
3454 Security Act, as amended, and administered by the Department through which foster care is provided on
3455 behalf of qualifying children.

3456 **§ 63.2-215. State Board of Social Services.**

3457 There shall be a State Board of Social Services consisting of 11 members appointed by the
3458 Governor. In making appointments, the Governor shall endeavor to select appointees of such
3459 qualifications and experience that the membership of the Board shall include persons suitably qualified to
3460 consider and act upon the various problems that the Board may be required to consider and act upon. The
3461 Board shall include a member from each of the social services regions of the state established by the
3462 Commissioner. At least one member of the Board shall be a licensed health care professional, ~~one member~~
3463 ~~shall be a representative of stand-alone licensed child care centers that meet the accountability standards~~

3464 of state recognized accreditation pursuant to § 22.1-19, and one member shall be a representative of
3465 religiously exempt child care centers. The appointments shall be subject to confirmation by the General
3466 Assembly if in session and, if not, then at its next succeeding session.

3467 The members of the Board shall be appointed for four-year terms, except that appointments to fill
3468 vacancies shall be for the unexpired term.

3469 No person shall be eligible to serve for or during more than two successive terms; however, any
3470 person appointed to fill a vacancy may be eligible for two additional successive terms after the term of the
3471 vacancy for which he was appointed has expired. Members of the Board may be suspended or removed
3472 by the Governor at his pleasure.

3473 The Board shall select a chairman from its membership, and under rules adopted by itself may
3474 elect one of its members as vice-chairman. It shall elect one of its members as secretary.

3475 The Board shall meet at such times as it deems appropriate and on call of the chairman when in
3476 his opinion meetings are expedient or necessary, provided that the Board meet at least six times each
3477 calendar year.

3478 A majority of the current membership of the Board shall constitute a quorum for all purposes.

3479 The main office of the Board shall be in the City of Richmond.

3480 **§ 63.2-501. Application for assistance.**

3481 A. Except as provided for in the state plan for medical assistance services pursuant to § 32.1-325,
3482 application for public assistance shall be made to the local department and filed with the local director of
3483 the county or city in which the applicant resides; however, when necessary to overcome backlogs in the
3484 application and renewal process, the Commissioner may temporarily utilize other entities to receive and
3485 process applications, conduct periodic eligibility renewals, and perform other tasks associated with
3486 eligibility determinations. Such entities shall be subject to the confidentiality requirements set forth in §
3487 63.2-501.1. Applications and renewals processed by other entities pursuant to this subsection shall be
3488 subject to appeals pursuant to § 63.2-517. Such application may be made either electronically or in writing
3489 on forms prescribed by the Commissioner and shall be signed by the applicant or otherwise attested to in
3490 a manner prescribed by the Commissioner under penalty of perjury in accordance with § 63.2-502.

3491 If the condition of the applicant for public assistance precludes his signing or otherwise attesting
3492 to the accuracy of information contained in an application for public assistance, the application may be
3493 made on his behalf by his guardian or conservator. If no guardian or conservator has been appointed for
3494 the applicant, the application may be made by any competent adult person having sufficient knowledge of
3495 the applicant's circumstances to provide the necessary information, until such time as a guardian or
3496 conservator is appointed by a court.

3497 B. Local departments or the Commissioner shall provide each applicant for public assistance with
3498 information regarding his rights and responsibilities related to eligibility for and continued receipt of
3499 public assistance. Such information shall be provided in an electronic or written format approved by the
3500 Board that is easily understandable and shall also be provided orally to the applicant by an employee of
3501 the local department, except in the case of energy assistance. The local department shall require each
3502 applicant to acknowledge, in a format approved by the Board, that the information required by this
3503 subsection has been provided and shall maintain such acknowledgment together with information
3504 regarding the application for public assistance.

3505 C. Local departments or the Commissioner shall provide each applicant for Medicaid with
3506 information regarding advance directives pursuant to Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title
3507 54.1, including information about the purpose and benefits of advance directives and how the applicant
3508 may make an advance directive.

3509 D. The Commissioner and local departments shall administer the Child Care Subsidy Program as
3510 provided for in the State Child Care Plan prepared by the Department of Education.

3511 **§ 63.2-601.2. Statewide Temporary Assistance for Needy Families (TANF) Program Funding**
3512 **Pool Program.**

3513 A. The Department shall develop a Statewide TANF Program Funding Pool Program (the Funding
3514 Pool Program) and shall allocate to the Funding Pool Program that portion of the TANF block grant to be
3515 awarded to service providers for expanded TANF programs, which shall include all funds not transferred
3516 to the ~~Child Care and Development Block Grant~~ or Social Services Block Grant or used for cash

3517 assistance, employment services, or child-care benefits through the TANF program, up to an amount equal
3518 to 12 percent of the total amount of the TANF block grant for that year.

3519 B. Prior to submission of its proposed biennial budget to the Governor, the Department shall issue
3520 a Request for Proposals for use of available funds from the Funding Pool Program to service providers
3521 providing expanded TANF programs through a competitive process that is designed in a manner that
3522 ensures that all service providers in the Commonwealth, regardless of size or geographic location, are
3523 afforded the opportunity to apply for funds. All programs and services funded through the Funding Pool
3524 Program shall comply with all federal and state statutory and regulatory requirements and shall serve the
3525 stated purposes of the TANF program.

3526 C. In developing the Request for Proposals, the Department shall include:

3527 1. A long-range planning and priority-setting process to identify state and local service needs and
3528 avoid overlap or duplication of services. The planning and priority-setting process shall include
3529 opportunity for citizen participation and consideration of local and statewide service needs and priorities;

3530 2. A competitive process, to include uniform eligibility criteria for service providers seeking
3531 funding and uniform application and selection procedures for comparable service categories;

3532 3. Uniform oversight, administrative, and reporting requirements for service providers receiving
3533 funding through the Funding Pool Program; and

3534 4. Uniform program evaluation criteria to determine the effectiveness and efficiency of comparable
3535 services funded through the Funding Pool Program.

3536 D. The Department shall require all service providers applying for funding through the Funding
3537 Pool Program to submit a detailed proposal that includes a proposed budget, proposed program outcomes,
3538 and proposed program outcome measures. Following review of applications for funding received pursuant
3539 to this section, the Department shall provide a summary of the requests for funding and recommendations
3540 to the Governor and the General Assembly of the programs to be funded in the proposed biennial budget,
3541 the levels of funding recommended, and the rationale for such recommendations, and the Governor shall
3542 consider such recommendations in developing the proposed budget.

3543 E. The Department shall require all providers receiving Funding Pool Program funds to report
3544 annually on the use of the funds and outcomes achieved and shall include such information in its annual
3545 report to the General Assembly.

3546 **§ 63.2-603. Eligibility for TANF; childhood immunizations.**

3547 An applicant for TANF shall provide verification that all eligible children not enrolled in school,
3548 a licensed family day home as defined in § 22.1-289.02, or a licensed child day center as defined in §
3549 22.1-289.02, have received immunizations in accordance with § 32.1-46. However, if an eligible child has
3550 not received immunizations in accordance with § 32.1-46, verification shall be provided at the next
3551 scheduled redetermination of eligibility for TANF after initial eligibility is granted that the child has
3552 received at least one dose of each of the immunizations required by § 32.1-46 as appropriate for the child's
3553 age and that the child's physician or the local health department has developed a plan for completing the
3554 immunizations. Verification of compliance with the plan for completing the immunizations shall be
3555 presented at subsequent redeterminations of eligibility for TANF.

3556 If necessary, the local department shall provide assistance to the TANF recipient in obtaining
3557 verification from immunization providers. No sanction may be imposed until the reason for the failure to
3558 comply with the immunization requirement has been identified and any barriers to accessing
3559 immunizations have been removed.

3560 Failure by the recipient to provide the required verification of immunizations shall result in a
3561 reduction in the amount of monthly assistance received from the TANF program until the required
3562 verification is provided. The reduction shall be ~~fifty dollars~~ \$50 for the first child and ~~twenty-five dollars~~
3563 \$25 for each additional child for whom verification is not provided.

3564 Any person who becomes ineligible for TANF payments as a result of this provision shall
3565 nonetheless be considered a TANF recipient for all other purposes.

3566 **§ 63.2-1509. Requirement that certain injuries to children be reported by physicians, nurses,**
3567 **teachers, etc.; penalty for failure to report.**

3568 A. The following persons who, in their professional or official capacity, have reason to suspect
3569 that a child is an abused or neglected child, shall report the matter immediately to the local department of

3570 the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred
3571 or to the Department's toll-free child abuse and neglect hotline:

- 3572 1. Any person licensed to practice medicine or any of the healing arts;
- 3573 2. Any hospital resident or intern, and any person employed in the nursing profession;
- 3574 3. Any person employed as a social worker or family-services specialist;
- 3575 4. Any probation officer;
- 3576 5. Any teacher or other person employed in a public or private school, kindergarten, ~~or nursery~~
3577 ~~school~~ child day program, as that term is defined in § 22.1-289.02;
- 3578 6. Any person providing full-time or part-time child care for pay on a regularly planned basis;
- 3579 7. Any mental health professional;
- 3580 8. Any law-enforcement officer or animal control officer;
- 3581 9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;
- 3582 10. Any professional staff person, not previously enumerated, employed by a private or state-
3583 operated hospital, institution or facility to which children have been committed or where children have
3584 been placed for care and treatment;
- 3585 11. Any person 18 years of age or older associated with or employed by any public or private
3586 organization responsible for the care, custody or control of children;
- 3587 12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-
3588 151 et seq.) of Chapter 1 of Title 9.1;
- 3589 13. Any person 18 years of age or older who has received training approved by the Department of
3590 Social Services for the purposes of recognizing and reporting child abuse and neglect;
- 3591 14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility
3592 for public assistance;
- 3593 15. Any emergency medical services provider certified by the Board of Health pursuant to § 32.1-
3594 111.5, unless such provider immediately reports the matter directly to the attending physician at the
3595 hospital to which the child is transported, who shall make such report forthwith;

3596 16. Any athletic coach, director or other person 18 years of age or older employed by or
3597 volunteering with a private sports organization or team;

3598 17. Administrators or employees 18 years of age or older of public or private day camps, youth
3599 centers and youth recreation programs;

3600 18. Any person employed by a public or private institution of higher education other than an
3601 attorney who is employed by a public or private institution of higher education as it relates to information
3602 gained in the course of providing legal representation to a client; and

3603 19. Any minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization
3604 or denomination usually referred to as a church, unless the information supporting the suspicion of child
3605 abuse or neglect (i) is required by the doctrine of the religious organization or denomination to be kept in
3606 a confidential manner or (ii) would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

3607 If neither the locality in which the child resides nor where the abuse or neglect is believed to have
3608 occurred is known, then such report shall be made to the local department of the county or city where the
3609 abuse or neglect was discovered or to the Department's toll-free child abuse and neglect hotline.

3610 If an employee of the local department is suspected of abusing or neglecting a child, the report
3611 shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt
3612 of such a report by the court, the judge shall assign the report to a local department that is not the employer
3613 of the suspected employee for investigation or family assessment. The judge may consult with the
3614 Department in selecting a local department to respond to the report or the complaint.

3615 If the information is received by a teacher, staff member, resident, intern or nurse in the course of
3616 professional services in a hospital, school or similar institution, such person may, in place of said report,
3617 immediately notify the person in charge of the institution or department, or his designee, who shall make
3618 such report forthwith. If the initial report of suspected abuse or neglect is made to the person in charge of
3619 the institution or department, or his designee, pursuant to this subsection, such person shall notify the
3620 teacher, staff member, resident, intern or nurse who made the initial report when the report of suspected
3621 child abuse or neglect is made to the local department or to the Department's toll-free child abuse and
3622 neglect hotline, and of the name of the individual receiving the report, and shall forward any

3623 communication resulting from the report, including any information about any actions taken regarding the
3624 report, to the person who made the initial report.

3625 The initial report may be an oral report but such report shall be reduced to writing by the child
3626 abuse coordinator of the local department on a form prescribed by the Board. Any person required to make
3627 the report pursuant to this subsection shall disclose all information that is the basis for his suspicion of
3628 abuse or neglect of the child and, upon request, shall make available to the child-protective services
3629 coordinator and the local department, which is the agency of jurisdiction, any information, records, or
3630 reports that document the basis for the report. All persons required by this subsection to report suspected
3631 abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with
3632 the investigating agency and shall make related information, records and reports available to the
3633 investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy
3634 Act (20 U.S.C. § 1232g). Provision of such information, records, and reports by a health care provider
3635 shall not be prohibited by § 8.01-399. Criminal investigative reports received from law-enforcement
3636 agencies shall not be further disseminated by the investigating agency nor shall they be subject to public
3637 disclosure.

3638 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall, due
3639 to the special medical needs of infants affected by substance exposure, include (i) a finding made by a
3640 health care provider within six weeks of the birth of a child that the child was born affected by substance
3641 abuse or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) a diagnosis made
3642 by a health care provider within four years following a child's birth that the child has an illness, disease,
3643 or condition that, to a reasonable degree of medical certainty, is attributable to maternal abuse of a
3644 controlled substance during pregnancy; or (iii) a diagnosis made by a health care provider within four
3645 years following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero
3646 exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included
3647 in the report along with the facts relied upon by the person making the report. Such reports shall not
3648 constitute a per se finding of child abuse or neglect. If a health care provider in a licensed hospital makes
3649 any finding or diagnosis set forth in clause (i), (ii), or (iii), the hospital shall require the development of a

3650 written discharge plan under protocols established by the hospital pursuant to subdivision B 6 of § 32.1-
3651 127.

3652 C. Any person who makes a report or provides records or information pursuant to subsection A or
3653 who testifies in any judicial proceeding arising from such report, records, or information shall be immune
3654 from any civil or criminal liability or administrative penalty or sanction on account of such report, records,
3655 information, or testimony, unless such person acted in bad faith or with malicious purpose.

3656 D. Any person required to file a report pursuant to this section who fails to do so as soon as
3657 possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse or
3658 neglect, shall be fined not more than \$500 for the first failure and for any subsequent failures not less than
3659 \$1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article 7 (§
3660 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make the
3661 report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

3662 E. No person shall be required to make a report pursuant to this section if the person has actual
3663 knowledge that the same matter has already been reported to the local department or the Department's toll-
3664 free child abuse and neglect hotline.

3665 **§ 63.2-1515. Central registry; disclosure of information.**

3666 The central registry shall contain such information as shall be prescribed by Board regulation;
3667 however, when the founded case of abuse or neglect does not name the parents or guardians of the child
3668 as the abuser or neglector, and the abuse or neglect occurred in a licensed or unlicensed child day center,
3669 as defined in § 22.1-289.02; a licensed, registered, or approved family day home; as defined in § 22.1-
3670 289.02; a private or public school; or a children's residential facility, the child's name shall not be entered
3671 on the registry without consultation with and permission of the parents or guardians. If a child's name
3672 currently appears on the registry without consultation with and permission of the parents or guardians for
3673 a founded case of abuse and neglect that does not name the parents or guardians of the child as the abuser
3674 or neglector, such parents or guardians may have the child's name removed by written request to the
3675 Department. The information contained in the central registry shall not be open to inspection by the public.
3676 However, appropriate disclosure may be made in accordance with Board regulations.

3677 The Department shall respond to requests for a search of the central registry made by (i) local
3678 departments, (ii) local school boards, and (iii) governing boards or administrators of private schools
3679 accredited pursuant to § 22.1-19 regarding applicants for employment, pursuant to § 22.1-296.4, in cases
3680 where there is no match within the central registry within 10 business days of receipt of such requests. In
3681 cases where there is a match within the central registry regarding applicants for employment, the
3682 Department shall respond to requests made by local departments, local school boards, and governing
3683 boards or administrators within 30 business days of receipt of such requests. The response may be by first-
3684 class mail or facsimile transmission.

3685 The Department shall disclose information in the central registry to the Chairmen of the
3686 Committees for the Courts of Justice of the Senate and House of Delegates for the purpose of determining
3687 if any person being considered for election to any judgeship has been the subject of any founded complaint
3688 of child abuse or neglect.

3689 Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate
3690 of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) Virginia affiliate of
3691 Childhelp USA, (d) volunteer fire company or volunteer emergency medical services agency, or (e) court-
3692 appointed special advocate program pursuant to § 9.1-153 shall be conducted at no charge.

3693 **§ 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities,**
3694 **centers, and agencies exempt.**

3695 The Board is authorized to adopt regulations and schedules for fees to be charged for processing
3696 applications for licenses to operate assisted living facilities, adult day care centers, and child welfare
3697 agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations
3698 based on the capacity of such facilities, centers, and agencies. Fees shall be used for the development and
3699 delivery of training for operators and staff of facilities, centers, and agencies. Fees shall be expended for
3700 this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall
3701 not be applicable to facilities, centers, or agencies operated by federal entities.

3702 ~~The Board shall develop training programs for operators and staffs of licensed child day programs.~~
3703 ~~Such programs shall include formal and informal training offered by institutions of higher education, state~~

~~3704 and national associations representing child care professionals, local and regional early childhood~~
~~3705 educational organizations and licensed child care providers. Training provided to operators and staffs of~~
~~3706 licensed child day programs shall include training and information regarding shaken baby syndrome, its~~
~~3707 effects, and resources for help and support for caretakers. To the maximum extent possible, the Board~~
~~3708 shall ensure that all provider interests are represented and that no single approach to training shall be given~~
~~3709 preference.~~

3710 § 63.2-1701. Licenses required; issuance, expiration, and renewal; maximum number of
3711 residents, participants or children; posting of licenses.

3712 A. As used in this section, "person" means any individual; corporation; partnership; association;
3713 limited liability company; local government; state agency, including any department, institution, authority,
3714 instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial
3715 entity that operates or maintains a child welfare agency, adult day care center, or assisted living facility.

3716 B. Every person who constitutes, or who operates or maintains, an assisted living facility, adult
3717 day care center, or child welfare agency shall obtain the appropriate license from the Commissioner, which
3718 may be renewed. However, no license shall be required for an adult day care center that provides services
3719 only to individuals enrolled in a Programs of All-Inclusive Care for the Elderly program operated in
3720 accordance with an agreement between the provider, the Department of Medical Assistance Services and
3721 the Centers for Medicare and Medicaid Services. The Commissioner, upon request, shall consult with,
3722 advise, and assist any person interested in securing and maintaining any such license. Each application for
3723 a license shall be made to the Commissioner, in such form as he may prescribe. It shall contain the name
3724 and address of the applicant and, if the applicant is an association, partnership, limited liability company,
3725 or corporation, the names and addresses of its officers and agents. The application shall also contain a
3726 description of the activities proposed to be engaged in and the facilities and services to be employed,
3727 together with other pertinent information as the Commissioner may require.

3728 C. The licenses shall be issued on forms prescribed by the Commissioner. Any two or more
3729 licenses may be issued for concurrent operation of more than one assisted living facility, adult day care
3730 center, or child welfare agency, but each license shall be issued upon a separate form. Each license and

3731 renewals thereof for an assisted living facility, adult day care center, or child welfare agency may be issued
3732 for periods of up to three successive years, unless sooner revoked or surrendered. ~~Licenses issued to child~~
3733 ~~day centers under this chapter shall have a duration of two years from date of issuance.~~

3734 D. The length of each license or renewal thereof for an assisted living facility shall be based on
3735 the judgment of the Commissioner regarding the compliance history of the facility and the extent to which
3736 it meets or exceeds state licensing standards. On the basis of this judgment, the Commissioner may issue
3737 licenses or renewals thereof for periods of six months, one year, two years, or three years.

3738 E. The Commissioner may extend or shorten the duration of licensure periods for a child welfare
3739 agency whenever, in his sole discretion, it is administratively necessary to redistribute the workload for
3740 greater efficiency in staff utilization.

3741 F. Each license shall indicate the maximum number of persons who may be cared for in the assisted
3742 living facility, adult day care center, or child welfare agency for which it is issued.

3743 G. The license and any other documents required by the Commissioner shall be posted in a
3744 conspicuous place on the licensed premises.

3745 H. Every person issued a license that has not been suspended or revoked shall renew such license
3746 prior to its expiration.

3747 I. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting
3748 within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be
3749 required to be licensed.

3750 **§ 63.2-1702. Investigation on receipt of application.**

3751 Upon receipt of the application, the Commissioner shall cause an investigation to be made of the
3752 activities, services, and facilities of the applicant and of his character and reputation or, if the applicant is
3753 an association, partnership, limited liability company, or corporation, the character and reputation of its
3754 officers and agents, and upon receipt of the initial application, an investigation of the applicant's financial
3755 responsibility. The financial records of an applicant shall not be subject to inspection if the applicant
3756 submits an operating budget and at least one credit reference. In the case of child welfare agencies and
3757 assisted living facilities, the character and reputation investigation upon application shall include

3758 background checks pursuant to ~~§§ § 63.2-1721 and 63.2-1721.1~~; however, a children's residential facility
3759 shall comply with the background check requirements contained in § 63.2-1726. Records that contain
3760 confidential proprietary information furnished to the Department pursuant to this section shall be exempt
3761 from disclosure pursuant to subdivision 4 of § 2.2-3705.5.

3762 **§ 63.2-1706.1. Inspections of child welfare agencies; prioritization.**

3763 The Commissioner shall prioritize inspections of child welfare agencies in the following order: (i)
3764 inspections conducted in response to a complaint involving a ~~licensed, registered, license exempt, or~~
3765 ~~unlicensed~~ child welfare agency; and (ii) inspections of ~~licensed or registered~~ child welfare agencies that
3766 are not conducted in response to a complaint; ~~(iii) inspections of license exempt or unlicensed child~~
3767 ~~welfare agencies that have entered into a contract with the Department or a local department to provide~~
3768 ~~child care services funded by the Child Care and Development Block Grant, other than inspections~~
3769 ~~conducted in response to a complaint; and (iv) inspections of license exempt and unlicensed child welfare~~
3770 ~~agencies that are not conducted in response to a complaint.~~

3771 **§ 63.2-1708. Records and reports.**

3772 Every licensed assisted living facility, licensed adult day care center, or ~~licensed or registered~~ child
3773 welfare agency, ~~or family day home approved by a family day system~~ shall keep such records and make
3774 such reports to the Commissioner as he may require. The forms to be used in the making of such reports
3775 shall be prescribed and furnished by the Commissioner.

3776 **§ 63.2-1715. Exemptions from licensure.**

3777 A. ~~The following programs are not child day programs and shall not be required to be licensed:~~

3778 1. ~~A program of instructional experience in a single focus, such as, but not limited to, computer~~
3779 ~~science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no~~
3780 ~~child is allowed to attend for more than 25 days in any three-month period commencing with enrollment.~~
3781 ~~This exemption does not apply if children merely change their enrollment to a different focus area at a site~~
3782 ~~offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.~~

3783 2. ~~Programs of instructional or recreational activities wherein no child under age six attends for~~
3784 ~~more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child~~

~~3785 six years of age or above attends for more than six hours weekly when school is in session or 12 hours~~
~~3786 weekly when school is not in session. Competition, performances and exhibitions related to the~~
~~3787 instructional or recreational activity shall be excluded when determining the hours of program operation.~~

~~3788 3. Instructional programs offered by private schools that serve school-age children and that satisfy~~
~~3789 compulsory attendance laws or provide services under the Individuals with Disabilities Education Act, as~~
~~3790 amended, and programs of school-sponsored extracurricular activities that are focused on single interests~~
~~3791 such as, but not limited to, music, sports, drama, civic service, or foreign language.~~

~~3792 4. Instructional programs offered by public schools that serve preschool-age children, satisfy~~
~~3793 compulsory attendance laws, or provide services under the Individuals with Disabilities Education Act, as~~
~~3794 amended, and programs of school-sponsored extracurricular activities that are focused on single interests~~
~~3795 such as, but not limited to, music, sports, drama, civic service, or foreign language.~~

~~3796 5. Early intervention programs for children eligible under Part C of the Individuals with~~
~~3797 Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per~~
~~3798 week.~~

~~3799 6. Practice or competition in organized competitive sports leagues.~~

~~3800 7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, Bar Mitzvah~~
~~3801 or Bat Mitzvah classes, and nurseries offered by religious institutions and provided for the duration of~~
~~3802 specified religious services or related activities to allow parents or guardians or their designees who are~~
~~3803 on-site to attend such religious services and activities.~~

~~3804 8. A program of instructional or athletic experience operated during the summer months by, and~~
~~3805 as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-~~
~~3806 19 and administered by the Virginia Council for Private Education.~~

~~3807 B. The following child day programs shall not be required to be licensed:~~

~~3808 1. A child day program or child day center that has obtained an exemption pursuant to § 63.2-~~
~~3809 1716.~~

~~3810 2. A program where, by written policy given to and signed by a parent or guardian, school-age~~
~~3811 children are free to enter and leave the premises without permission. A program that would qualify for~~

~~this exemption except that it assumes responsibility for the supervision, protection, and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.~~

~~3. A program that operates no more than a total of 20 program days in the course of a calendar year, provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.~~

~~4. Child-minding services that are not available for more than three hours per day for any individual child offered on-site in commercial or recreational establishments if the parent or guardian (i) can be contacted and can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing services or participating in activities offered by the establishment.~~

~~5. A certified preschool or nursery school program operated by a private school that is accredited by an accrediting organization recognized by the State Board of Education pursuant to § 22.1-19 and complies with the provisions of § 63.2-1717.~~

~~6. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by the local government offering the program.~~

~~7. A program offered by a local school division, operated for no more than four hours per day, staffed by local school division employees, and attended by children who are at least four years of age and are enrolled in public school or a preschool program within such school division. Such programs shall be subject to safety and supervisory standards established by the local school division offering the program.~~

~~8. Child-minding services offered by a business on the premises of the business to no more than four children under the age of 13 at any given time and for no more than eight hours per day, provided that the parent or guardian of every child receiving care is an employee of the business who is on the premises of the business and can resume responsibility for the child's supervision within 30 minutes upon request.~~

~~C. Child-day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1 or 5, shall:~~

3838 1. File with the Commissioner annually and prior to beginning operation of a child day program a
3839 statement indicating the intent to operate a child day program, identifying the specific provision of this
3840 section relied upon for exemption from licensure, and certifying that the child day program has disclosed
3841 in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;

3842 2. Report to the Commissioner all incidents involving serious physical injury to or death of
3843 children attending the child day program. Reports of serious physical injuries, which shall include any
3844 physical injuries that require an emergency referral to an offsite health care professional or treatment in a
3845 hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day
3846 after the death occurred; and

3847 3. Post in a visible location on the premises notice that the child day program is operating as a
3848 program exempt from licensure with basic health and safety requirements but has no direct oversight by
3849 the Department.

3850 D. Child day programs that are exempt from licensure pursuant to subsection B, except for child
3851 day programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, or 7 shall:

3852 1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the
3853 child day program whenever children are present or at any other location in which children attending the
3854 child day program are present;

3855 2. Maintain daily attendance records that document the arrival and departure of all children;

3856 3. Have an emergency preparedness plan in place;

3857 4. Comply with all applicable laws and regulations governing transportation of children; and

3858 5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

3859 E. The Commissioner shall inspect child day programs that are exempt from licensure pursuant to
3860 subsection B to determine compliance with the provisions of this section only upon receipt of a complaint,
3861 except as otherwise provided by law.

3862 F. Family day homes that are members of a licensed family day system shall not be required to
3863 obtain a license from the Commissioner.

3864 ~~G.~~ No person to whom parental and legal custodial powers have been delegated pursuant to
3865 Chapter 10 (§ 20-166 et seq.) of Title 20 shall be required to obtain a license to operate an independent
3866 foster home or approval as a foster parent from the Commissioner.

3867 ~~H.~~B. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting
3868 within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be
3869 required to be licensed.

3870 **§ 63.2-1720. (Effective July 1, 2020, or earlier; see Acts 2017, cc. 189 and 751, as amended by**
3871 **Acts 2018, cc. 146 and 278) Assisted living facilities and adult day care centers; employment for**
3872 **compensation of persons or use of volunteers convicted of certain offenses prohibited; background**
3873 **check required; penalty.**

3874 A. No assisted living facility or adult day care center shall hire for compensated employment or
3875 continue to employ persons who have been convicted of any offense set forth in clause (i) of the definition
3876 of barrier crime in § 19.2-392.02. A child-placing agency or independent foster home licensed in
3877 accordance with the provisions of this chapter shall not hire for compensated employment or continue to
3878 employ persons who (i) have been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) are
3879 the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All
3880 applicants for employment shall undergo background checks pursuant to subsection C.

3881 B. A licensed assisted living facility or adult day care center may hire an applicant or continue to
3882 employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any
3883 substantially similar offense under the laws of another jurisdiction, if five years have elapsed following
3884 the conviction.

3885 C. Background checks pursuant to subsection A require:

3886 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is
3887 the subject of any pending criminal charges within or outside the Commonwealth and, in the case of
3888 licensed child-placing agencies, or independent foster homes, ~~and family day systems, registered family~~
3889 ~~day homes, and family day homes approved by family day systems~~, whether or not the person has been
3890 the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

3891 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §
3892 19.2-389; and

3893 3. In the case of licensed child-placing agencies, or independent foster homes, ~~and family day~~
3894 ~~systems, registered family day homes, and family day homes approved by family day systems~~, a search
3895 of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and
3896 neglect.

3897 D. Any person making a materially false statement regarding the sworn statement or affirmation
3898 provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor.

3899 E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency,
3900 or licensed independent foster home, ~~licensed family day system, registered family day home, or family~~
3901 ~~day home approved by a family day system~~ shall obtain for any compensated employees within 30 days
3902 of employment (i) an original criminal record clearance with respect to convictions for any offense set
3903 forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record
3904 from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies, or
3905 independent foster homes, ~~and family day systems, registered family day homes, and family day homes~~
3906 ~~approved by family day systems~~, (a) an original criminal record clearance with respect to any barrier crime
3907 as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
3908 Exchange and (b) a copy of the information from the central registry for any compensated employee within
3909 30 days of employment. However, no employee shall be permitted to work in a position that involves
3910 direct contact with a person or child receiving services until an original criminal record clearance or
3911 original criminal history record has been received, unless such person works under the direct supervision
3912 of another employee for whom a background check has been completed in accordance with the
3913 requirements of this section. If an applicant is denied employment because of information from the central
3914 registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult
3915 day care center, child-placing agency, or independent foster home, ~~or family day system, registered family~~
3916 ~~day home, or family day home approved by a family day system~~ shall provide a copy of the information
3917 obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

3918 F. No volunteer who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii)
3919 is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth shall
3920 be permitted to serve in a licensed child-placing agency, ~~or independent foster home, or family day system,~~
3921 ~~registered family day home, or family day home approved by a family day system.~~ Any person desiring
3922 to volunteer at a licensed child-placing agency, ~~or independent foster home, or family day system,~~
3923 ~~registered family day home, or family day home approved by a family day system~~ shall provide the
3924 agency, system, or home with a sworn statement or affirmation pursuant to subdivision C 1. Such licensed
3925 child-placing agency, ~~or independent foster home, or family day system, registered family day home, or~~
3926 ~~family day home approved by a family day system~~ shall obtain for any volunteers, within 30 days of
3927 commencement of volunteer service, a copy of (a) the information from the central registry and (b) an
3928 original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an
3929 original criminal history record from the Central Criminal Records Exchange. Any person making a
3930 materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision
3931 C 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the
3932 central registry or convictions appearing on his criminal history record, such licensed child-placing
3933 agency, ~~or independent foster home, or family day system, registered family day home, or family day~~
3934 ~~home approved by a family day system~~ shall provide a copy of the information obtained from the central
3935 registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this
3936 subsection shall apply only to volunteers who will be alone with any child in the performance of their
3937 duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency, ~~or~~
3938 ~~independent foster home, or family day system, registered family day home, or family day home approved~~
3939 ~~by a family day system,~~ whether or not such parent-volunteer will be alone with any child in the
3940 performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children
3941 that includes the parent-volunteer's own child in a program that operates no more than four hours per day,
3942 provided that the parent-volunteer works under the direct supervision of a person who has received a
3943 clearance pursuant to this section.

3944 G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult
3945 day care center without the permission or under the supervision of a person who has received a clearance
3946 pursuant to this section.

3947 H. Further dissemination of the background check information is prohibited other than to the
3948 Commissioner's representative or a federal or state authority or court as may be required to comply with
3949 an express requirement of law for such further dissemination.

3950 I. Notwithstanding any other provision of law, a licensed adult day care center that provides
3951 services to individuals receiving services under the state plan for medical assistance services or any waiver
3952 thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history
3953 background check has been completed for an employee in accordance with this section and (ii) whether
3954 such employee is eligible for employment.

3955 J. A licensed assisted living facility shall notify and provide all students a copy of the provisions
3956 of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living
3957 facility.

3958 K. A person who complies in good faith with the provisions of this section shall not be liable for
3959 any civil damages for any act or omission in the performance of duties under this section unless the act or
3960 omission was the result of gross negligence or willful misconduct.

3961 **§ 63.2-1721. (Effective July 1, 2020, or earlier; see Acts 2017, cc. 189 and 751, as amended by**
3962 **Acts 2018, cc. 146 and 278) Background check upon application for licensure as a child-placing**
3963 **agency, etc.; penalty.**

3964 A. Upon application for licensure as a child-placing agency; ~~or independent foster home, or family~~
3965 ~~day system or registration as a family day home~~, (i) all applicants; and (ii) agents at the time of application
3966 who are or will be involved in the day-to-day operations of the child-placing agency; ~~or independent foster~~
3967 ~~home, family day system, or family day home~~ or who are or will be alone with, in control of, or supervising
3968 one or more of the children; ~~and (iii) any other adult living in the home of an applicant for registration as~~
3969 ~~a family day home~~ shall undergo a background check pursuant to subsection B. Upon application for
3970 licensure as an assisted living facility, all applicants shall undergo a background check pursuant to

3971 subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies ~~and~~
3972 ~~operators of family day homes requesting approval by family day systems, and any other adult residing in~~
3973 ~~the family day home or existing employee or volunteer of the family day home,~~ shall undergo background
3974 checks pursuant to subsection B prior to their approval.

3975 B. Background checks pursuant to subsection A require:

3976 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is
3977 the subject of any pending criminal charges within or outside the Commonwealth and whether or not the
3978 person has been the subject of a founded complaint of child abuse or neglect within or outside the
3979 Commonwealth;

3980 2. A criminal history records check through the Central Criminal Records Exchange pursuant to §
3981 19.2-389; and

3982 3. In the case of child-placing agencies, independent foster homes, ~~family day systems, and family~~
3983 ~~day homes,~~ or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-
3984 1515 for any founded complaint of child abuse and neglect.

3985 C. The person required to have a background check pursuant to subsection A shall submit the
3986 background check information required in subsection B to the Commissioner's representative prior to
3987 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an
3988 assisted living facility, shall provide an original criminal record clearance with respect to any barrier crime
3989 as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
3990 Exchange. An applicant for licensure as an assisted living facility shall provide an original criminal record
3991 clearance with respect to any offense set forth in clause (i) of the definition of barrier crime in § 19.2-
3992 392.02 or an original criminal history record from the Central Criminal Records Exchange. Any person
3993 making a materially false statement regarding the sworn statement or affirmation provided pursuant to
3994 subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an
3995 applicant for licensure as an assisted living facility, required to have a background check (i) has been
3996 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of
3997 child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver

3998 by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, G, or
3999 H, (a) the Commissioner shall not issue a license to a child-placing agency, or independent foster home,
4000 ~~or family day system or a registration to a family day home;~~ or (b) a child-placing agency shall not approve
4001 an adoptive or foster home; ~~or (c) a family day system shall not approve a family day home.~~ If any
4002 applicant for licensure as an assisted living facility required to have a background check has been
4003 convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the
4004 Commissioner shall not issue a license to an assisted living facility.

4005 D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed
4006 child-placing agency, or independent foster home, ~~or family day system or a registered family day home;~~
4007 be alone with, in control of, or supervising one or more children receiving services from a licensed child-
4008 placing agency, or independent foster home, ~~or family day system or a registered family day home;~~ or be
4009 permitted to work in a position that involves direct contact with a person receiving services without first
4010 having completed background checks pursuant to subsection B unless such person is directly supervised
4011 by another person for whom a background check has been completed in accordance with the requirements
4012 of this section.

4013 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
4014 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one
4015 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of another
4016 jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed
4017 following the conviction.

4018 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
4019 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and
4020 entering a dwelling home or other structure with intent to commit larceny, or any substantially similar
4021 offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or
4022 other appropriate authority, provided that 25 years have elapsed following the conviction.

4023 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
4024 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv)

4025 of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor
4026 or other appropriate authority, provided that 10 years have elapsed following the conviction, or eight years
4027 have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by
4028 the criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test
4029 administered by a laboratory or medical professional within 90 days prior to being approved, and such
4030 test returned with a negative result; and (iv) complies with any other obligations as determined by the
4031 Department.

4032 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
4033 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii)
4034 of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor
4035 or other appropriate authority, provided that 20 years have elapsed following the conviction.

4036 I. If an applicant is denied licensure, registration or approval because of information from the
4037 central registry or convictions appearing on his criminal history record, the Commissioner shall provide a
4038 copy of the information obtained from the central registry or the Central Criminal Records Exchange or
4039 both to the applicant.

4040 J. Further dissemination of the background check information is prohibited other than to the
4041 Commissioner's representative or a federal or state authority or court as may be required to comply with
4042 an express requirement of law for such further dissemination.

4043 **§ 63.2-1722. (For expiration date, see Acts 2017, cc. 189 and 751, as amended by Acts 2018,**
4044 **cc. 146 and 278) Revocation or denial of renewal based on background checks; failure to obtain**
4045 **background check.**

4046 A. The Commissioner may revoke or deny renewal of a license ~~or registration~~ of a child welfare
4047 agency, assisted living facility, or adult day care center; and a child-placing agency may revoke the
4048 approval of a foster home; ~~and a family day system may revoke the approval of a family day home if the~~
4049 assisted living facility, adult day care center, child welfare agency, or foster home; ~~or approved family~~
4050 ~~day home~~ has knowledge that a person specified in § 63.2-1720, ~~63.2-1720.1, or 63.2-1721, or 63.2-1721.1~~
4051 required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-

392.02 or (ii) in the case of a child welfare agency, or foster home, ~~or family day home~~, is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720, ~~subsection G of § 63.2-1720.1~~, or subsection E, F, G, or H of § 63.2-1721, and the facility, center, ~~home~~, or agency refuses to separate such person from employment or service or allows the household member to continue to reside in the home.

B. Failure to obtain background checks pursuant to §§ 63.2-1720, ~~63.2-1720.1~~, and 63.2-1721, ~~and 63.2-1721.1~~ shall be grounds for denial, revocation, or termination of a license, registration, or approval or any contract with the Department or a local department to provide child care services to clients of the Department or local department. No violation shall occur if the assisted living facility, adult day care center, child-placing agency, or independent foster home, ~~family day system, family day home, or child day center~~ has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

§ 63.2-1722. (For effective date, see Acts 2017, cc. 189 and 751, as amended by Acts 2018, cc. 146 and 278) Revocation or denial of renewal based on background checks; failure to obtain background check.

A. The Commissioner may revoke or deny renewal of a license ~~or registration~~ of a child welfare agency, assisted living facility, or adult day care center; and a child-placing agency may revoke the approval of a foster home; ~~and a family day system may revoke the approval of a family day home~~ if the assisted living facility, adult day care center, child welfare agency, or foster home, ~~or approved family day home~~ has knowledge that a person specified in § 63.2-1720, ~~63.2-1720.1~~, or 63.2-1721, ~~or 63.2-1721.1~~ required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) in the case of a child welfare agency, or foster home, ~~or family day home~~, is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720, ~~subsection G of § 63.2-1720.1~~, or subsection E, F, or G of § 63.2-1721.1, and the facility, center, or agency refuses to separate such person from employment or service.

4079 B. Failure to obtain background checks pursuant to §§ 63.2-1720, ~~63.2-1720.1, and~~ 63.2-1721, ~~and~~
4080 ~~63.2-1721.1~~ shall be grounds for denial or revocation of a license, registration, or approval. No violation
4081 shall occur if the assisted living facility, adult day care center, child-placing agency, or independent foster
4082 home, ~~family day system, family day home, or child day center~~ has applied for the background check
4083 timely and it has not been obtained due to administrative delay. The provisions of this section shall be
4084 enforced by the Department.

4085 **§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.**

4086 A. Any person who seeks to operate, or volunteer or work at a child welfare agency and who is
4087 disqualified because of a criminal conviction ~~or a criminal conviction in the background check of any~~
4088 ~~other adult living in a family day home regulated by the Department,~~ pursuant to §§ 63.2-1720, ~~63.2-~~
4089 ~~1720.1, and~~ 63.2-1721, ~~63.2-1721.1, and~~ 63.2-1724, may apply in writing for a waiver from the
4090 Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person
4091 is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and
4092 well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who
4093 has been convicted of any barrier crime as defined in § 19.2-392.02. ~~However, the Commissioner may~~
4094 ~~grant a waiver to a family day home licensed or registered by the Department if any other adult living in~~
4095 ~~the home of the applicant or provider has been convicted of not more than one misdemeanor offense under~~
4096 ~~§ 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, provided~~
4097 ~~that (a) five years have elapsed following the conviction and (b) the Department has conducted a home~~
4098 ~~study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home~~
4099 ~~and (2) a determination that the offender is now a person of good moral character and reputation. The~~
4100 ~~waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such~~
4101 ~~adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2, or any~~
4102 ~~substantially similar offense under the laws of another jurisdiction. Any waiver granted under this section~~
4103 ~~shall be available for inspection by the public.~~ The child welfare agency shall notify in writing every
4104 parent and guardian of the children in its care of any waiver granted for its operators, employees or
4105 volunteers.

4106 B. The Board shall adopt regulations to implement the provisions of this section.

4107 **§ 63.2-1734. Regulations for child welfare agencies.**

4108 ~~A.~~The Board shall adopt regulations for the activities, services, and facilities to be employed by
4109 persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that
4110 such activities, services, and facilities are conducive to the welfare of the children under the custody or
4111 control of such persons or agencies.

4112 Such regulations shall be developed in consultation with representatives of the affected entities
4113 and shall include, but need not be limited to, matters relating to the sex, age, and number of children and
4114 other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and
4115 premises to be used, and reasonable standards for the activities, services, and facilities to be employed.
4116 Such limitations and standards shall be specified in each license and renewal thereof. Such regulations
4117 shall not require the adoption of a specific teaching approach or doctrine or require the membership,
4118 affiliation, or accreditation services of any single private accreditation or certification agency.

4119 ~~Such regulations governing child day programs providing care for school-age children at a location~~
4120 ~~that is currently approved by the Department of Education or recognized as a private school by the State~~
4121 ~~Board of Education for school occupancy and that houses a public or private school during the school year~~
4122 ~~shall not (i) prohibit school-age children from using outdoor play equipment and areas approved for use~~
4123 ~~by students of the school during school hours or (ii) in the case of public schools, require inspection or~~
4124 ~~approval of the building, vehicles used to transport children attending the child day program that are~~
4125 ~~owned by the school, or meals served to such children that are prepared by the school.~~

4126 ~~Such regulations governing orientation and training of child day program staff shall provide that~~
4127 ~~parents or other persons who participate in a cooperative preschool center on behalf of a child attending~~
4128 ~~such cooperative preschool center, including such parents and persons who are counted for the purpose of~~
4129 ~~determining staff to child ratios, shall be exempt from orientation and training requirements applicable to~~
4130 ~~staff of child day programs; however, such regulations may require such parents and persons to complete~~
4131 ~~up to four hours of training per year. This orientation and training exemption shall not apply to any parent~~
4132 ~~or other person who participates in a cooperative preschool center that has entered into a contract with the~~

4133 ~~Department or a local department to provide child care services funded by the Child Care and~~
4134 ~~Development Block Grant.~~

4135 ~~B. The Board shall adopt or amend regulations, policies, and procedures related to child day care~~
4136 ~~in collaboration with the Virginia Recreation and Park Society. No regulation adopted by the Board shall~~
4137 ~~prohibit a child day center from hiring an armed security officer, licensed pursuant to Article 4 (§ 9.1-138~~
4138 ~~et seq.) of Chapter 1 of Title 9.1, to provide protection for children placed in the care of the child day~~
4139 ~~center or employees of the center. The Board shall adopt or amend regulations related to therapeutic~~
4140 ~~recreation programs in collaboration with the Virginia Park and Recreation Society and the Department~~
4141 ~~of Behavioral Health and Developmental Services.~~

4142 **§ 63.2-1911. Duty of local departments to enforce support; referral to Department.**

4143 Whenever a local department approves an application for public assistance on behalf of a child or
4144 children and it appears to the satisfaction of the local department that the child has been abandoned by the
4145 noncustodial parent or that the person who has a responsibility for the care, support, or maintenance of
4146 such child has failed or neglected to give proper care or support to such child, the local department shall
4147 refer the matter to the Division within the Department responsible for the enforcement of support. The
4148 foregoing provisions of this section shall not apply to applications for the Child Care Subsidy Program.

4149 **2. That §§ 2.2-208.1, 63.2-1701.1, 63.2-1704, 63.2-1704.1, 63.2-1716, 63.2-1717, 63.2-1720.1, 63.2-**
4150 **1721.1, 63.2-1724, 63.2-1725, 63.2-1727, 63.2-1738, 63.2-1809 through 63.2-1813, and 63.2-1815 of**
4151 **the Code of Virginia are repealed.**

4152 **3. That the provisions of the first and second enactments of this act shall become effective on July**
4153 **1, 2021, except that § 22.1-289.04 of the Code of Virginia, as created by this act, shall become**
4154 **effective in due course.**

4155 **4. That the Superintendent of Public Instruction shall convene a work group to develop and**
4156 **establish a plan for implementing a statewide unified early childhood care and education system**
4157 **that incorporates relevant policy-making, funding, governance, oversight, and accountability**
4158 **functions and culminates implementation of the quality rating and improvement system as provided**
4159 **in the tenth enactment of this act. The work group shall include representatives of (i) the**

4160 Secretariats of Education and Health and Human Resources; (ii) relevant state agencies, including
4161 the Department of Planning and Budget, the Office of the Attorney General, the Department of
4162 Education, and the Department of Social Services; (iii) relevant regulatory boards, including the
4163 Board of Education; and (iv) the House Committee on Appropriations and the Senate Committee
4164 on Finance and Appropriations. Such plan shall incorporate and take into account the priorities,
4165 responsibilities, and structures needed at the state, local, and regional levels to ensure successful
4166 start-up, management, and delivery of a cohesive, aligned early childhood care and education
4167 system, as well as outline phases and a timeline for transitioning from the current state to the
4168 envisioned state of the system. Such plan shall identify necessary statutory and regulatory changes
4169 and necessary steps to transfer lead agency authority for relevant federal programs, including the
4170 Child Care and Development Block Grant and Head Start State Collaboration Office grants, to the
4171 Department of Education to align with its current administration of the Virginia Preschool Initiative
4172 and other early childhood programs. The work group shall report on the implementation plan to
4173 the Chairmen of the House Committees on Appropriations, Education, and Health, Welfare and
4174 Institutions and the Senate Committees on Education and Health, Finance and Appropriations, and
4175 Rehabilitation and Social Services no later than December 1, 2020, and shall provide such Chairmen
4176 an update on the implementation of the plan no later than December 1, 2021.

4177 5. That the Department of Social Services and the Department of Education shall develop a plan
4178 and enter into a cooperative agreement to ensure a coordinated and seamless transition pursuant
4179 to the provisions of this act that occurs by July 1, 2021, and that is cost effective and does not
4180 interrupt the provision of state services or have undue impact on the operation or function of either
4181 agency.

4182 6. That the regulations adopted by the State Board of Social Services to administer and implement
4183 the programs that are to be transferred from the State Board of Social Services to the Board of
4184 Education pursuant to this act shall remain in full force and effect until altered, amended, or
4185 rescinded by the Board of Education.

- 4186 7. That guidance adopted by the State Board of Social Services or Department of Social Services
4187 relating to programs to be transferred by this act shall remain in effect until amended or repealed.
- 4188 8. That any valid license that is in effect on July 1, 2021, that was issued by the Department of Social
4189 Services under a program that is transferred to the Department of Education pursuant to the
4190 provisions of this act shall, on July 1, 2021, be deemed to be a license issued by the Department of
4191 Education and shall remain valid and in effect until its expiration date.
- 4192 9. That the initial actions of the Board of Education to adopt, with necessary amendments, the
4193 regulations implementing the programs being transferred by this act shall be exempt from Article
4194 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. After transfer of the
4195 programs, if the Board of Education determines that additional amendments to the regulations are
4196 necessary solely to enable implementation of the programs in accordance with this act, the
4197 regulatory actions necessary shall not be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of
4198 Title 2.2 of the Code of Virginia.
- 4199 10. That by July 1, 2021, the Department of Education shall be the lead agency for the
4200 administration of the Child Care and Development Block Grant and the Head Start Collaboration
4201 Office.
- 4202 11. That, notwithstanding the provisions of the third enactment of this act, the establishment and
4203 implementation of the quality rating and improvement system described in § 22.1-289.05 of the
4204 Code of Virginia, as created by this act, shall occur as follows: (i) the Board of Education shall
4205 establish such quality rating and improvement system no later than July 1, 2021, and (ii) the initial
4206 quality ratings shall be published in the fall of 2023.

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